# NICARAGUA

**Fact Sheet 10/2002**

**Background: Country Demographics, Political Environment, and Economic Indicators:**
*Sources: U.S. Department of State Nicaragua Country Report on Human Rights Practices (2001)*
*CIA World Factbook Nicaragua*
*U.S. Department of State Report on Economic Policy and Trade Practices (2001)*

GEOGRAPHY: Nicaragua is the largest country in Central America, with a total area of 129,494 square km (slightly smaller than New York state). Lake Nicaragua is the largest freshwater body in Central America.

POPULATION: The population is approximately 5.2 million (March 2002 estimate).
69% of the population is mestizo (mixed Amerindian and white), 17% white, 9% black, and 5% Amerindian. 85% are Roman Catholic. Spanish is the official language; English is also spoken, and indigenous languages are spoken on the Atlantic Coast.

EDUCATION: 65.7% of the population over age 15 is literate. Education is compulsory through grade 6, but this is not enforced. A 1995 study estimated that 45% of Nicaraguan children were not attending school.

WOMEN: Cases of domestic and sexual violence are widespread and underreported. The 1996 Law against Aggression against Women reformed the Criminal Code to criminalize domestic violence and give sentences of up to 6 years for convicted offenders. The police manage 18 women's commissariats in 14 cities; police, social workers, psychologists and lawyers in these offices provide social and legal help to women, but they are often underfunded.

POLITICAL ENVIRONMENT:
Constitution: January 9, 1987, with reforms in 1995 and 2000.
The government is a republic. The president is both chief of state and head of government. The president appoints the Council of Ministers. In July 1995 the presidential term was amended to 5 years. The Unicameral National Assembly has 93 seats; members are elected to 5 year terms through proportional representation.
Enrique Bolaños of the Liberal Constitutionalist Party (PLC) was elected as president in November 2001, defeating Daniel Ortega of the Sandinista National Liberation Front (FSLN).

ECONOMIC INDICATORS:
In 2000, 50% of the population was below the poverty line.
Labor force: 1.9 million (2001): approximately 43% in services, 42% in agriculture, and 15% in industry.
The 2001 unemployment rate was 10.3%. (Unofficial estimates range from 40-50%).
Exports and imports: Exports (2000): $631 million (primarily coffee, shrimp, lobster, cotton, tobacco, beef, sugar, bananas, and gold). Main export partners are the U.S. (37.7%), El Salvador (12.5%), Germany (9.8%), Costa Rica (5.1%), Spain (2.5%) and France (2.1%).
Imports (2000): $1.6 billion (primarily machinery, equipment, raw materials, petroleum, and consumer goods). Nicaragua imports from the U.S (34.5%), Costa Rica (11.4%), Guatemala (7.3%), Panama (6.9%), Venezuela (5.9%), and El Salvador (5.5%).

In 2001, Nicaragua's external debt was $6.7 billion, and it continues to seek forgiveness of the majority of this debt under the Heavily Indebted Poor Countries Initiative. Nicaragua began an IMF-approved structural adjustment program in 1998.
GDP by sector: Agriculture 31.6%, Industry 22.8%, Services 45.6%.
FY98 military expenditures were $26 million (1.2% of GDP).

AGRICULTURE: The economy is primarily agricultural. Main products include coffee, bananas, sugarcane, cotton, rice, corn, tobacco, sesame, soya, beans, beef, veal, pork, poultry, and dairy products.

WORLD BANK & IMF:
During the Bush administration, "U.S. aid, which totalled some $440 million in the first two years, was tied directly to meeting the conditions of an unusually strict structural adjustment plan. The U.S. Agency for International Development worked closely with the IMF and World Bank in prodding the Nicaraguan government to downsize the public sector, restrict rural credit, privatize public-sector industries, and change laws to favor foreign investment." (Lisa Haugaard, Foreign Policy in Focus, March 1997)
1990-1996: The Chamorro administration worked with the IMF to cut the public sector, eliminating 183,000 government jobs (9% of the country's labor force) between 1990 and 1993. The World Bank and IMF required such cutbacks as evidence of structural adjustment. (www.cb3rob.net/~merijn89/ARCH1/msg00441.html)
1997: Nicaragua signed an Enhanced Structural Adjustment Facility (ESAF) with the IMF. The ESAF stated that Nicaragua would receive more credit from international lending institutions, and must lay off 1,500 government employees. (www.hartford-hwp.com/archives/47/221.html)
The Nicaraguan government began a structural adjustment program in 1998 and negotiated fiscal targets with the IMF.
December 2000: The IMF and the World Bank Groups' International Development Association (IDA) approved a debt reduction package for Nicaragua under the Heavily Indebted Poor Countries (HPIC) Initiative. Nicaragua was promised $4.5 billion in debt service relief ($3.3 in net present value terms). (Source: IMF Press Release No. 00/78 from 12/21/00).
October 2001: IMF staff suspended Nicaragua's debt relief program because Nicaragua had not satisfactorily complied with the IMF's demands that they cut spending and privatize public utilities. The IMF's Article IV consultation staff report stated that Nicaragua must "proceed vigorously with public sector reforms" and "deepen trade liberalization". (www.s-j-c.net/NicaraguaOct2001.htm)
April 2001: The World Bank approved a US$13.5 million interest-free credit to strengthen Nicaragua's capacity to mitigate the effects of natural disasters. (News Release # 2001/293/LAC)
October 12, 2002: popular organizations ranging from unions to consumer-defense groups gathered on to protest the plans of the Inter-American Development Bank (IDB) and the Bolaños government to privatize public services. The organizations demanded, among other things, "an immediate halt to the incurring of new debt, disguised as "development loans" and designed to forward such Northern initiatives as the Puebla-to-Panamá Plan and the so-called Free Trade Area of the Americas; and an immediate halt to the privatization of basic services, especially water and power". Ruth Herrera of the National Consumer Defense League spoke of the effects that World Bank, BID and International Monetary Fund "structural adjustment programs" have had over the past 12 years. (Nicaragua Network Hotline, October 14, 2002).
Criticisms with regard to labor rights:
"Some of the IMF and Bank documents treat labor flexibility almost as code for mass layoffs. For example, a 'structural benchmark' in Nicaragua's dealings with the IMF is that the country 'continue to implement a labor mobility program aimed at reducing public sector positions'."

"In Nicaragua...one of the performance criteria for continued IMF support has been the adoption of drastic pension reforms, including raising the retirement age, increasing the minimum contribution period to receive benefits, and upping the level of employee contributions."
"A 1999 informal World Bank report on Nicaragua's social security system concluded, 'The parameters of the system need to be re-defined and a mandatory, defined contribution system based on individual capitalization accounts introduced'. The Bank recommended these accounts be managed by private companies determined through an 'international competitive bidding process."
"Drawn up under World Bank supervision, Nicaragua's new pension system is designed to 'increase contribution rates, raise the retirement age, standardize eligibility requirements, reduce replacement rates, increase collection efficiency and tighten eligibility for disability benefits." (Lloyd & Weissman, 9/01, www.cb3rob.net/~merijn89/ARCH1/msg00441.html)

**Labor Laws:**

*Sources: ICFTU Annual Survey of Violations of Trade Union Rights for Nicaragua (2002)*
*U.S. Department of State Nicaragua Country Report on Human Rights Practices (2001)*
*U.S. Department of State Report on Economic Policy and Trade Practices (2001)*

ASSOCIATION: The Constitution and the 1996 labor code affirm the right of public and private sector workers (excluding the military and police) to organize voluntarily in unions. Labor leaders claim that less than half of the formal sector workforce (including agricultural workers) is unionized.

BARGAINING: The Constitution recognizes the right to bargain collectively. The 1996 labor code states that companies engaged in labor disputes with employees must negotiate with the union.

STRIKE: The Constitution recognizes the right to strike. A majority of workers must vote in favor of the strike. In order for the strike to be legal, the union must demonstrate to the Ministry of Labor that it has conducted good faith negotiations with the management. Only one strike has been declared legal since 1996; the Labor Ministry admits that it would take 6 months for a union to go through the strike legalization process. Protection against retribution may be withdrawn in the case of an illegal strike.

EPZs: There are 34 companies in the free trade zones, employing 30,000 workers. While at least seven of these companies have unions and collective agreements, only 3% of the workforce is unionized because of employer hostility. Labor laws, except for minimum wage laws, apply equally in the free trade zones. Workers (mostly women) are often required to work unpaid overtime. There have been reports of blacklist distribution, with over 800 union member names.

"The new management of the free trade zone is sending out strong signals that unions are not welcome." Nicaraguan officials and FTZ management blame unions for the slow growth of the maquiladora sector. There have been mass dismissals aimed at breaking the unions in several clothing factories. ("Union-busting in Nicaragua's free trade zone," Labor Alerts Feb 3, 2000, www.hartford-hwp.com/archives/47/249.html)

The Taiwanese Chentex garment factory was violently occupied twice in early 1998 by Sandinista Workers Central (CTS) member who demanded better and safer working conditions. Chentex officials decided to shut down their Nicaragua operations in July 1998, but changed their minds after an agreement was reached between management and union representatives.

Taiwanese companies provide over half of the jobs in the Nicaraguan EPZs. (Fonseca, Roberto. IPS, July 24, 1998, www.hartford-hwp.com/archives/47/246.html)

MINIMUM AGE: Children may begin working with parental permission at age 14 (raised from 12 by the 1996 labor code). Children aged 14-16 may work only 6 hours a day and never at night. At age 17, parental permission is no longer required. Child labor that can affect normal childhood development or interfere with the school year is prohibited by the Constitution. Child labor is prohibited in mines and garbage dumps.

CHILD LABOR: Child labor rules are rarely enforced in the informal sector due to ineffective enforcement mechanisms. A 1998 UNICEF report estimated that 42% of children between the ages of 6 and 9 were working. The Ministry of Family sponsors programs such as childcare services, return-to-school programs, and technical and vocational training that can reach 10,000 children.

MINIMUM WAGE: Rates were raised in November 1997 and again in August 1999 and February 2002. With the exception of the mining sector, the minimum wage is below the government's estimate of the cost for an urban family's basic requirements. Most urban workers earn more than minimum wage. Different minimum wages apply in different sectors.

HOURS/LEAVE: The Constitution and 1996 labor code mandate an 8 hour workday. The standard legal workweek is up to 48 hours with one day of rest.

HEALTH & SAFETY: The 1996 code tried to bring Nicaragua into compliance with international health and safety standards but the Ministry of Labor lacks the staff and resources that would be necessary for enforcement.

DISCRIMINATION: The law prohibits sexual harassment in the workplace, but it continues to be a problem.

MIGRATION: Labor migration from Nicaragua to Costa Rica continues to increase, raising tensions between the countries.

TRAFFICKING IN PERSONS: The law prohibits trafficking in persons, but there are problems with Nicaraguan women and children being trafficked to other countries for sexual exploitation.

GSP: In March 1987, during the Sandinista regime, the USTR found that Nicaragua did not meet the GSP Worker Rights Standard, and Nicaragua was terminated from the GSP program.

ILO CONVENTIONS RATIFIED:
C29 (Forced Labour Convention, 1930), Ratified 4/12/34
C87 (Freedom of Association and Protection of the Right to Organize Convention, 1948), Ratified 10/31/67
C98 (Right to Organize and Collective Bargaining Convention, 1949), Ratified 10/31/67
C100 (Equal Renumeration Convention, 1951), Ratified 10/31/67
C105 (Abolition of Forced Labour Convention, 1957), Ratified 10/31/67
C111 (Discrimination (Employment and Occupation) Convention, 1958), Ratified 10/31/67
C138 (Minimum Age Convention, 1973), Ratified 11/2/81
C182 (Worst Forms of Child Labour Convention, 1999), Ratified 11/6/00

Other sources

*Roa Romero, Gabriela. "Conflictos siguen en zonas francas," La Prensa. February 11, 2002.*

A recent study by the Women's Movement Maria Elena Cuadra surveyed 4,770 women who worked in the maquilas of 17 different companies in the Free Zone. The results were as follows:
63.82% did not have a copy of their work contract.
32.52% said that they had been forced to perform tasks that were not in their work contracts.
38.8% had been forced to work overtime, though the Labor Law specifies that this is not legal.
49.63% worked more than 9 extra hours each week (9 hours is the maximum set by the Labor Code). 22.6% worked 11-15 extra hours each week, 19.6% worked 16-20 hours extra, 3.46% worked 21-25 extra hours, and 3.91% worked over 25 extra hours.
33.94% said that they were not paid extra for overtime.
63% said that they lose incentives if they ask permission to go to the doctor.
48.78% had been the victims of verbal violence or psychological pressure in the workplace.
11.47% had been the victims of sexual harassment or blackmailing. Researchers think that the actual number is probably higher, because it is a topic that is difficult to discuss.
5.87% said they had been the victims of physical violence from their immediate (national or foreign) supervisors.

*Fernández, Mariela. "Empresas violan derechos laborales," La Prensa. February 14, 2002.*

The Procuraduría de los Derechos Humanos presented the results of a new investigation before the Consejo Superior de la Empresa Privada (COSEP). The study, "The human rights situation for Nicaraguan workers, specifically labor relations," cited violations of labor laws, lack of adherence to the minimum wage, and the lack of collective bargaining in most companies. It also found that the Ministry of Work did not effectively enforce labor laws and made its decisions based on politics.
A commission composed of COSEP leaders and members of the Procuraduría has been created to promote adherence to labor laws.

*Fernández, Mariela. "Mujeres de maquilas y domésticas no conocen Código Laboral," La Prensa. February 22, 2002.*

The Maria Elena Cuadra Women's Movement recently completed a study that found that 90% of the women workers in the maquila and domestic service sectors had never held a copy of the Labor Code.

*Martínez, Moisés. "Mujeres de las maquilas discuten sus derechos," La Prensa. February 25, 2002.*

The Maria Elena Cuadra movement organized a conference for 1,500 women workers to discuss reproductive rights, occupational health, globalization, the work conditions of domestic workers, and ways to promote the rights of Nicaraguan women workers. The conference aimed to educate women about their rights and responsibilities as workers.

*U.S. Department of Labor.* ***Advancing the Campaign Against Child Labor: Efforts at the Country Level, 2002.***

Child labor statistics:
The National Commission Against Child Labor estimated that 160,000 children under age 17 were working in 1998, and that 140,000 of them were employed in rural activities like harvesting crops (168).

Education:
In 1996, 51% of primary school entrants reached grade 5 (169).

Enforcement and initiatives:
A child labor investigations department in the Labor Ministry monitors occupational safety and health in the agricultural sector (170).
The National Commission for the Eradication of Child Labor, which includes representatives from the government, international organizations, NGOs, and the private sector, has a strategic plan for combating child labor. The Commission aims to strengthen inspections, promote education, and emphasize the elimination of child labor in Managua, the Santos Barcenas market, and an indigenous community in León.(171)
Ten thousand children benefit from childcare, vocational programs, and education incentives provided by the Ministry of Family. (171)
The Ministry of Labor is working with ILO-IPEC to eliminate child labor in Managua's largest garbage dump, in Chontales farms, and in rural coffee plantations, and to combat child prostitution in León (171).

***Movimiento de Mujeres María Elena Cuadra.*** ***Diagnóstico: Condiciones de Salud e Higiene Ocupacional Trabajadoras en las Maquilas.*** ***Managua, Nicaragua, 2001.***

MEC studied occupational health and safety conditions in 10 factories in the maquila sector by conducting 1,500 interviews (62% were women and 38% men). These 1,500 workers represent 10% of the total number of workers in these factories.
Results were as follows:
74.75% had not received trainings regarding the risks of their position.
80.28% had not been taught how to use the protective equipment and clothing.
65.42% had not received training on steps to follow in the case of an accident.
59.23% had not received protective equipment or protective clothing.
19.93% of those who had received protective equipment or clothing had to pay for them.
87.58% use the protective equipment and clothing that they have been given.
24.32% said that there is no occupational safety and hygiene program in their company.
32.84% said that there is no Mixed Commission on Occupational Safety and Hygiene in their workplace (58.23% said there was, and 8.93% didn't respond or were unsure).
71.35% had not received instructions on the prevention and control of fires in the workplace.
60.89% said that there were not teams trained in first aid at the workplace.
63.02% did not know of an evacuation plan in case of fire.
52.46% do not consider the machines that they use to be safe.
18.51% had suffered accidents while using the machinery they work with.
44.24% said that there were not a sufficient number of stations for handwashing.
57.76% said that general conditions of hygiene and cleanliness in their workplace are regular.
38.91% said they were good and 3.33% said they were bad.
75.76% spend more than 8 hours on their feet.

Engineer Luis Enrique Martínez Alfaro, Director General of Hygiene and Safety in the Labor Ministry: (translated)
"One of our priorities as a country is this [maquila] sector, because it is where a large part of the population is concentrated...it is for that reason that they are now creating two projects directed at the maquila sector. One is a project that has various stages, including the creation of a specific norm for the maquila, because in our country we have technical norms for safety and hygiene but they apply to other sectors or are general...The second stage is...financially supporting the companies that want programs of implementation, equipment, infrastructure, etc. The project starts this month with all of the companies in the maquila sector (about 35)...
"There is also another project, financed by the Secretary of Labor of the United States...this project only deals with training, in which there will be many courses for the Chinese.
"Before, we had a presence, but we didn't have trainings because this requires funding."
"In the maquilas there are problems with ventilation, fire prevention, because they work with flammable material and this does not have preventative measures, there is disorder in the workplace, a lot of material thrown in the passageways..."
"Our objective is not to sanction...We try to give them incentives to comply, if we arrive at the point of punishment, which is a fine, if they don't pay this hurts the worker because the factory closes. If we go to a factory and we find anomalies and we return and they have not fixed them, we fine them and if they don't pay we close it...They are not afraid of the fines, but they are afraid of being shut down."

***Movimiento de Mujeres María Elena Cuadra. <u>Diagnóstico: Avances y Retrocesos: Mujeres en las Maquilas de Nicaragua.</u> Managua, Nicaragua, 2002.***

4,770 surveys were conducted (27% men and 73% women) in 17 companies in Nicaragua's EPZs. Results were as follows:
94.17% had signed work contracts.
36.18% have a copy of their work contract.
42.08% do not know their labor rights.
24.57% had suffered a work-related accident at their present place of employment.
54.95% had suffered from illness, lesions or other health problems caused by their work.
45.05% said there were no air ventilators in their workplace.

From an interview with Dr. Emilio Noguera Cáceres, Inspector General, Labor Ministry:
There are 82 labor inspectors in Nicaragua. They have received training on gender, abuse, occupational safety and hygiene, the global economy, and the EPZs.

From an interview with Dr. Cristhian Balladeres Ordóñez, Director General of Union Associations, Labor Ministry:
The first union in the EPZs was created in 1996, and now there are 31 unions in these zones (21 are active).
About 11 Collective agreements have been signed in the EPZs, covering about 16,000 workers.

## THE CHENTEX CASE

Sources:

1. *Gonzalez, David. "Nicaragua's Trade Zone: Battleground for Unions," The New York Times, September 16, 2000.*
2. *U.S./LEAP. "Chentex Worker Struggle," 4/19/01. (www.usleap.org/Chentex.html)*
3. *Clean Clothes Campaign. "10 Apr 2001, Unions and the Chentex Factory in Nicaragua!" (www.cleanclothes.org/urgent/01-04-10.htm)*
4. *U.S. Department of State Nicaragua Country Report on Human Rights Practices (2001)*
5. *ICFTU Annual Survey of Violations of Trade Union Rights for Nicaragua (2002)*
6. *Fonseca, Roberto. "Labour Conflict Highlights EPZ Firms' Importance," IPS July 24, 1998.*

The Chentex factory, located in Nicaragua's Las Mercedes Free Trade Zone, is owned by the Taiwanese Nien Hsing denim company. Taiwan's government financed the Foreign Ministry building and provided hundreds of millions of dollars in aid. Taiwanese companies employed 6,712 people (52.4% of workers in the EPZs) in 1997; Chentex employed over 1,700 (6).

"When the union [of Chentex Workers] formed two years ago, it affiliated with the Sandinista Workers Confederation. Although workplace conditions improved, union leaders said, the company refused to negotiate a raise or attend arbitration sessions at the Labor Ministry. Instead, the company negotiated with another union, one affiliated with the Confederation of Nicaraguan Workers, a group widely believed to be under company control." (1)

1998: CST (Sandinista Workers Central) members occupied the Chentex factory twice, demanding better and safer working conditions. Chentex responded to workers' protests by threatening to withdraw from Nicaragua.
CST union workers negotiated a collective bargaining agreement with the Chentex management. The agreement postponed a discussion of salaries.

April 2000: After trying for 9 months to negotiate wage increases, the union held a work stoppage and a 2-day strike. The CST wanted to increase the minimum salary in the Chentex factory from $62 to $115/month (still below the government's estimate for the cost of a basic basket of goods). Union leaders were soon dismissed, with the approval of the Labor Ministry. When they appealed the dismissals, Chentex and labor officials said the dismissals were justified because the leaders did not consult the employees before calling the strike and had attempted to sabotage the factory. Emilio Noguera, inspector general of the labor ministry, said the dismissals were justified because outside groups had been paying the union leaders. By the end of May, 700 union members had been dismissed (5).

March 2001: The U.S. government warned the head of the Nicaraguan FTZ that failure to resolve the Chentex dispute could threaten trade benefits for Nicaragua's maquila sector.

April 4, 2001: In a case presented by the Nicaraguan Center for Human Rights (CENIDH), the Managua Court of Appeals ordered the reinstatement (with back pay) of 9 union leaders who had been fired from Chentex in June 2000. Chentex continued to fire union supporters.

May 10, 2001: An agreement was signed which offered to reinstate 4 union leaders and 17 other union members, and Chentex agreed to drop the suit demanding the dissolution of the union.

2002: The CST is no longer an active union at Chentex because membership fell below the required 20-worker minimum. (4)

# I. INTRODUCTION

Nicaragua, with a population of 5.4 million, is largely agrarian, with coffee, seafood, sugar and cattle its major exports. Apparel and tourism are growing in importance to the national economy. Nicaragua is a heavily indebted country and has suffered economically, due to the coffee crisis, inadequate investment, corruption and a high level of external and domestic debt. Indeed, unemployment stands at over 40% and the percentage of persons living below the national poverty line, according to the UNDP, is 47.9 percent.

The high unemployment and poverty are factors that affect the respect for and enforcement of labor laws in Nicaragua. Faced with a miniscule beget for the Ministry of Labor and pressures to create highly favorable climates for investment, such as low-wage, union-free workplaces, the government does not adequately protect the rights of workers, and in many cases, are complicit in the violation of them. The following report outlines some of the major concerns with regard to the observation of the core labor rights in Nicaragua.

# II. BACKGOUND ON NICARAGUAN JUSTICE SYSTEM

## 1. THE RULE OF LAW AND FUNDAMENTAL PRINCIPLES

The labor law of Nicaragua consists of a collection of legal standards and conventions whose reason for being, fundamentally, is to protect those workers' rights recorded in labor legislation. The fundamental principles of labor law set the foundation for attainment of these objectives.

**Principal "Fundamental Principles"**

- The rights recognized in this Code are irrenunciable.
- Legislation on labor limits or restricts the civil law principle of the autonomy of will. The legislation's provisions shall be rigorously fulfilled.
- In case of conflict or doubt concerning the application or interpretation of legal, conventional or regulatory rules for labor, those most favorable to the worker shall prevail.
- Those cases unforeseen in this Code or in complementary legal provisions shall be resolved in accordance with the general principles of Labor Law, jurisprudence, Comparative Law, Scientific Doctrine, International Conventions signed by Nicaragua, custom and Common Law.
- The rules contained in this Code and complementary labor legislation are of Public Law. Thus private interest must cede to social interest.

**The Constitution**

On paper, the Constitution of Nicaragua contains clear language that sets forth the rights of all workers to enjoy the fundamental rights of work, as identified by the ILO, as well as decent conditions of work.

Freedom of Association

Article 87. Full trade union freedom exists in Nicaragua. Workers may organize voluntarily in trade unions, which shall be constituted in accordance with the law. Workers are obligated neither to belong to a specific trade union nor to resign from one to which she or he belongs. Full trade union autonomy is recognized and trade union law is respected.

Right to Organize and Bargain Collectively

Article 83. The right to strike is recognized.

Article 88. Workers' inalienable right, in defense of their individual or collective interests, to reach with their employers 1) individual contracts and 2) collective contracts is guaranteed.

Child Labor

Article 84. Child labor that could affect normal childhood development or interfere with the obligatory school year is prohibited. Children and adolescents will be protected from any kind of economic or social exploitation.

Non-Discrimination and Decent Conditions of Work

Article 82. Workers have the right to working conditions that secure for them, in particular:

1. Equal remuneration for equal work under identical conditions, appropriate to its social responsibilities, without discrimination based on politic opinion, religion, race, sex or any other reason; and securing welfare fitting to human dignity.

2. Remuneration in legal tender at their place of work.

3. The inviolability of the minimum wage and social security benefits, except for the protection of one's family under the terms established by law.

4. Working conditions that guarantee physical safety, health, hygiene and the diminution of professional risks, constituting occupational safety for the worker.

5. A work-day of eight hours, with weekly rest, vacations, payment for national holidays, and payment for the thirteenth month, in accordance with the law.

6. Job stability in accordance with the law and equal opportunity for promotion, without any limitations beyond the factors of time, service, ability, efficiency and responsibility.

7. Social security for full protection and the means of survival in case of disability, old age, professional risks, illness or maternity; and for family members in case of death, in the forms and according to the conditions determined by law.

**Administrative And Judicial Access And Procedure**

Article 270 of the Labor Code stipulates that the labor authorities are:

a) Appeals Courts,
b) Labor Courts, and
c) the Ministry of Labor.

The country is divided into sixteen departments, two autonomous regions and 153 municipalities (these being the base units for the administrative division of the country). In terms of jurisdiction, both local and district judges, civil and otherwise, may hear labor-related cases.

In the city of Managua, there are two labor judges and a Labor Chamber in the Court of Appeals. In the rest of the country, district and local civil judges address conflicts of a judicial character concerning labor. They currently cover all departments and 134 municipalities, leaving only 23 municipalities uncovered – an 88% rate of access to justice.

The Ministry of Labor has a total of 84 Labor Inspectors at the national level, distributed in the following manner: Managua, 22; Estelí, 3; Nueva Segovia, 4 (Jalapa 1 and Ocotal 3); Madriz, 3 (Somoto 2 and San Juan del Río Coco 1); Chinandega, 5 (Chinandega 3, Chichigalpa 1, Corinto 1); León, 5; Granada, 5; Carazo, 4; Masaya, 3; Rivas, 3; Boaco, 2; Chontales, 4; Jinotega, 3; Matagalpa, 5; RAAN, 4; RAAS, 4 (Bluefields 3, El Rama 1); Río San Juan, 5 (San Carlos 4, Morrito 1).

As for the requirement in Article 307 subsection c) of the Labor Code that the worker must sue a legally established entity's official legal representative, and Articles 10 and 28 of the Labor Code (which signal who the employer's legal representatives are and who must appear in representation of legally recognized entities): these were superseded by the courts' jurisprudence, which ruled that the worker may sue anyone known to be a representative of the employer. The employer may appear himself or herself, or through a representative, depending on whether the case involves a natural person or a legally recognized entity.
There are three channels to pursue one's rights, the ordinary, extraordinary and administrative channels, and four mechanisms:

- Complain before the Human Rights Procurator, whose purpose will be to assist the worker (the Procurator's reports serve as evidence in the ordinary judicial channels).
- Bring a case before a labor judge in the administrative channels or in the labor courts, which are part of the ordinary channels.
- Appeal for legal protection: one must file the appeal in writing before an appellate court within thirty days after being notified of the administrative ruling (this is the extraordinary channel).
- Appeal the complaint before the ILO Committee on Trade Union Freedom.

## II. FULFILLMENT OF LABOR RIGHTS

### A. Collective Rights

## 1. Trade Union Freedom

### 1.1 National Laws and ILO International Conventions

#### Political Constitution

Trade union freedom is legally protected by the Political Constitution, which in Article 87 guarantees full trade union freedom and autonomy, establishing that: "There is full trade union freedom in Nicaragua. Workers shall organize voluntarily in trade unions and these can be constituted in accordance with what has been established by law. Worker shall be obligated neither to belong to a specific trade union nor to resign from one to which she or he belongs. Full trade union autonomy is recognized and trade union law is respected."

#### Labor Code

Article 204 of our Labor Code establishes that trade unions have the right to:

d) Freely draw up their statutes and regulations,
e) Freely elect their representatives,
f) Determine their organizational structure, administration and activities, and
g) Formulate their plans of action.

Our labor rules also establish, in Article 231, concerning trade union charters, that members of trade union Boards of Directors enjoy the right to not be penalized without just cause; and they cannot be fired without prior authorization from the Ministry of Labor, founded upon a just cause as established in the law.
Article 213 of the Labor Code establishes at ten days the duration of the administrative registration process. Additionally, it establishes disciplinary sanctions for late registration. Article 219 of the Labor Code also establishes Labor Judges as the authorities competent to recognize the dissolution of a trade union. In other words, there can be no dissolution through administrative channels.

### 1.2 Principal Changes in Labor Legislation over the Last Five Years

The new Labor Code that came into effect on December 30, 1996 improved some points concerning trade union freedom, such as:

- It reduced the number of workers needed to form a trade union from 25 to 20.
- It reduced the requirements to form trade unions at companies, which had been one-half of the total number of workers plus one, to 20 workers. Thus various trade unions can exist in a single company.
- It established causes for rejection of a trade union's registration, which had not been established in the previous Labor Code.

- It also expanded the fuero sindical from five to all members of a trade union's Board of Directors. And it expanded the fuero sindical from three organizers to all members of a new trade union, from the notification date through the time-period determined by law for its registration.

**1.3 Parallel Legislation That Influences Non-Compliance with the Law**

When Export Processing Zone (EPZ) laws were passed they contained only tax incentives. Thus Decree 46-91 on EPZs, published in Official Journal #221 on November 22, 1991, established exceptions on income tax; on taxes for transfer of real estate ownership; on transformation, fusion and reform of society taxes; and on taxes for introduction.

However, in the final section of this article establishing tax benefits it stipulates "In any case, businesses are subject to the labor rights consecrated in the Political Constitution, the relevant Labor Code, ministerial resolutions, International Conventions of the ILO ratified by Nicaragua, and other laws of the Republic." In practice, businesses in the EPZs openly claim a kind of judicial immunity, to avoid compliance with all the regulations cited previously. Every time inspections are planned or a meeting with the Ministry of Labor is arranged, the companies threaten to leave Nicaragua.

On the other hand they are not obliged to provide assurance that they will fulfill their commitments if they do leave the country. The fundamental problem is that the government and its organisms give benign treatment to companies in the EPZs and value very highly keeping them in the country, even at the cost of massive violations of Nicaraguan workers' labor rights.

**1.4 Principal Obstacles to the Fulfillment of Labor Laws**

Despite these beneficial reforms for workers, at times political will to fulfill the laws does not exist in the government and, as is now the case, the government identifies completely with business (the current President of the Republic was for many years President of the Higher Council for private businesses).
In practice the administrative authorities, for reasons of political preference, carry out selective repression against trade unions that are not aligned with the government in office. Among the unfair practices are the following:

1) When a trade union's leaders present their constitutional papers and statutes to obtain legal status for the union, functionaries charged with registering the union delay the process and warn the employer, so that they can coerce those workers who signed the union charter. As a result, some members remove their signatures from the constitutional papers and, with the reduced number, the workers are no longer able to meet the legal minimum of twenty members to become legal; or the employer seeks ways to fire the principal leaders.
2) When already formed trade unions are promoting negotiation of a list of demands or when a collective social-economic conflict occurs, the employers, try to break the movement by provoking the trade union leaders. They do this so that, when the trade union leaders react, the employers will have justification to ask that the union's charter be stripped, and then proceed to firing the leaders. The noteworthy thing in this case is that Labor Inspectors do not take into account the fact that this request comes in the context of a negotiation or a

collective conflict; they only take into account the appearances or formal circumstances.

3) When various leaders of a trade union have been fired, Ministry of Labor authorities state that, since no Board of Directors exists or since the Board of Directors is incomplete, the trade union is illegal and therefore cannot engage in collective bargaining nor call a strike.

To date it has been taboo to refer to illegal behavior by the administrative authorities on labor. This can translate into a limitation on the exercise of trade union freedom: Ministry of Labor authorities, in open competition with the judicial authorities, arrogate to themselves power to deny registration of a trade union; power to deny legal status or suspend it; and power to grant overtime to Board of Directors members without authorization from the trade union's assembly – which, independent of intention, can translate into disloyal practices by the authorities, consequently limiting exercise of the right to trade union freedom.
Another matter of great importance is the administrative proceedings to make rulings on terminating the employment of a worker covered by the trade union's charter. There is no special procedure, as would be the case with other legislation. The proceeding established by Article 48 of the Labor Code is stated equivocally, provoking judicial insecurity and weakening guarantees for trade unions' charters, which form one of the pillars on which rests the right to trade union freedom.

On the part of employers the following unfair practices, among others, have been observed:

a) promoters of a trade union are transferred to areas where they are isolated from the masses of workers;

b) promoters of organizing a trade union are fired;

c) parallel trade unions (yellow unions) are formed, to resist the independent union's actions;

d) the exercise of collective bargaining is limited, through conspiracy with the parallel trade union;

e) permission to carry out assemblies during working hours is denied;

f) productive operations are suspended in areas where the most belligerent trade union leaders are located.

**1.5 Additional Concerns of the ILO**

In 2003, the Committee of Experts made the following observations regarding the labor laws in effect in Nicaragua.

(1) The suspension of the Civil Service and Administrative Careers Act of 1990, section 43(8) which recognizes the right to organize, to strike and to collective bargaining of public servants, due to failure to adopt implementing regulations.

(2) Restrictions on the access of foreigners to trade union office (article 21 of the 1997 Regulations on Occupational Associations). The Committee nonetheless points out once again that provisions on nationality which are too strict might run the risk of some workers being deprived of the right to choose their representatives freely, for example, migrant workers working in sectors where they account for a considerable proportion of the membership. According to Article 3 of the Convention, workers' organizations must have the right to elect their representatives in full freedom. Furthermore national legislation ought to allow foreign workers to take up trade union office at least after a reasonable period of residence in the host country (see General Survey on freedom of association and collective bargaining, 1994, paragraph 118).

(3) Restrictions on the functions of federations and confederations (article 53 of the 1997 Regulations). As to the restrictions on the right to strike of federations and confederations, the Committee observes once again that in accordance with article 53 of the 1997 Regulations on occupational associations federations and confederations, shall only intervene in labor disputes to provide advice and the moral or economic support needed by the workers concerned. The Committee again reminds the Government that, pursuant to Articles 3, 5 and 6 of the Convention, workers' organizations, and the federations and confederations which they establish or join, shall have the right to organize their activities and to formulate their programs.

(4) The possibility of a dispute being submitted to compulsory arbitration 30 days after a strike has been called (sections 389 and 390 of the Labor Code). With regard to the maintenance of compulsory arbitration in sections 389 and 390 of the Labor Code where 30 days have elapsed from the calling of the strike, the Committee notes that the Government repeats its previous statement to the effect that if a dispute is referred to compulsory arbitration after this time period has elapsed, the arbitration award should be binding only if all the parties agree to it and only in cases in which the strike has been called in an essential service in the strict sense of the term, or in the context of an acute national crisis. The Committee hopes that the Government will pursue its efforts to bring the provisions of sections 389 and 390 of their Labor Code of 1996 into conformity with the Convention.

(5) Grounds on which a worker may lose trade union membership, which are left to the discretion of the public authority (article 32 of the 1997 Regulations).

## 2. Collective Bargaining Rights

### 2.1 National Laws and ILO International Conventions

The Constitution guarantees workers' right to collective bargaining. This guarantee is found in Article 88 of the Political Constitution: "Workers' inalienable right, in defense of their individual or collective interests, to reach with their employers 1) individual contracts and 2) collective contracts, is guaranteed. Both in accordance with the law." For its part the Labor Code establishes in Article 235 that a collective agreement is a State-approved written agreement reached between an employer or group of employers and one or more workers' organizations that have legal status.

### 2.2 Principal Changes in Labor Legislation over the Last Five Years

The new Labor Code, in effect since 1997, contains the following modifications:

a) Article 238, which states that all employers are obligated to negotiate collective agreements with members of their workers' trade unions.

b) Article 240, which states that collective agreements can be reviewed before they expire if such is made advisable by substantial changes in the socio-economic conditions of the company or country.

c) Article 241, which states that the term fixed for a collective agreement will be extended if neither of the parties has requested its revision.

d) The National Assembly's authentic interpretation of Labor Code Article 236 in Law 442, "Law of the Authentic Interpretation of Labor Code Article 236." In this law it is established "that no administrative or judicial authority may, through any procedure, cause workers or trade union leaders to give up wage claims, acquired rights, social security, or other benefits obtained through collective agreements or incorporated in individual labor contracts."

**2.3 Parallel Legislation That Influences Non-Compliance with Labor Law**

Law 344, "The Law for Promotion of Foreign Investment," published in Official Journal #93 on May 24, 2000. Although it establishes investors' rights, it also conditions them on respect for the Constitution and laws. However, there is an arrangement allowing investors to settle disputes, controversies or complaints through an Arbitration Tribunal. When this is invoked, cases cannot be taken by any other jurisdiction. In the same way, other jurisdictions that have signed investment contracts with the government have included clauses in the contracts stating that they will be under no other obligations than those contained in the contract.

In any cases, when summoned to collective bargaining employers frequently fail to appear or send a lawyer. Their written justification is that they are under no obligations other than those stated in their investment or concession contracts, or that the only courts with jurisdiction over them are Arbitration courts. Thus they deny the jurisdiction of all other courts. In any case, the government has lacked belligerence in letting these investors know that, independent of their obligations as investors or contractors, they have obligations to their workers.

**2.4 Principal Obstacles to the Fulfillment of Labor Laws**

The right to collective bargaining is intimately tied to the right to unionize. ILO Convention 87 pertains to trade unions and is taken up by Labor Code Article 235 when it expresses that a collective agreement is a State-approved written agreement reached between an employer or group of employers and one or many workers' organizations that have legal status

For that reason the aforementioned selective repression of the exercise of trade union freedom produces the principal obstacle to collective bargaining. Without trade union leaders in a Board of Directors there can be no negotiation of a list of demands, because trade union leaders are the office-holders entitled to negotiate.

**The following unfair practices have been observed:**

- Suspension, through administrative channels, of a Board of Director's legal status, so that the trade union will lose its charter and employers will be able to dismiss trade union leaders without having to seek authorization from the department's Labor Inspector as stipulated in Labor Code Article 231.
- When convenient for the employer, he or she authorizes, through the labor authorities, extension of the terms of a trade union Board of Directors that he or she has defeated. This is done without authorization from a general assembly of the trade union's members, violating trade union autonomy.
- Some employers, especially in the private sector, resist any negotiation of collective agreements with their workers.
- The Ministry of Labor's Conciliation Lawyers impose their own decisions regarding the content, limits and reach of clauses in a collective agreement.

Fundamentally, the cause of this intervention is the government's political will. The government believes that trade unions, their struggles and their strikes are frightening off foreign investors; and that their collective agreements raise costs of production or operation for business-owners, who may leave the country if they see their profitability drop.

The government's concern is to ensure at all costs that businesses currently in the country remain and to promote new investment. The principal attraction for investment is an immense mass of unemployed people who can be paid minimal fees. And in a climate of submission, not joining a trade union, not promoting collective bargaining, not promoting strikes and in general not making any demands can be made conditions for employment.

**2.5 Problems in Working Conditions Caused By Non-Compliance with the Law**

In companies where there is no possibility of negotiating a collective agreement, better working conditions are not achieved and current working conditions are not reviewed. In such companies, conditions that violate labor rights and infringe upon regulations regarding hygiene and security at work can go unchecked. Sometimes there are even practices that constitute crimes, such as when the social security payments deducted from workers' salaries are not deposited at the Nicaraguan Institute for Social Security (INSS) but utilized as capital for the company. This causes harm to workers, who cannot then use their healthcare subsidies.

**2.6.1 Cases of non-Compliance of Collective Rights**

From the beginning of their operations in Nicaragua, the maquilas have been denounced for violations of labor rights. In the public debate and between interested sectors, there are two positions with regard to this situation: those who consider that what is most important is that the companies generate employment and those that propose generation of employment but respecting labor rights.

CENIDH, Centro Nicaraguense de Derechos Humanos, issued a report in 2003 in which it selected six cases it received between 1998 and 2002. Four cases were collective conflicts in which the right to free association, fuero sindical, collective bargaining, strike and other human rights were at issue. Those cases are summarized below.

1. Chentex

**The rise of the union . . . and the dismissals**

This company belongs to the Nien Hsing consortium from Taiwan, which is comprised of six companies, and considered the most important of the maquilas. At the beginning of 1998, 72 workers formed a union affiliated with the CST and presented the constitutive act to the DAS and the Ministry of Labor (MITRAB) for registration. Four days later, the company fired the union founders, including the executive committee headed by Secretary General Gladys Manzanares.

This firing provoked the first big strike in the maquilas, with 1,800 workers participating. The conflict ended with an agreement between the management of Chentex, the Federacion Textil Vestuario of the CST and the union executives, which contemplated the reinstatement of the persons dismissed and no retaliation against the persons who participated in the strike.

The reinstatement took place, though the union was not registered until February 13, more than 10 days after having presented the request. The firings continued, which generated a second work stoppage, a new agreement and a subsequent reinstatement

After 6 months, August 19, 1998, the parties signed a collective agreement leaving the negotiation of the wages outstanding for a term of less than a year. The request was introduced before the Inspectorate and taken up the next day, but the Directorate of Negotiation and Conciliation of MITRAB summoned the employer six months later. The company did not show up for this session nor any of four dates afterwards.
In April of 2000, the first negotiation on wages was undertaken with the participation of the representatives of the company, the union affiliated with the CST and the union affiliated with the CTNa, which was founded after the CST. They did not reach an agreement, now that the company proposed only to undertake a study for the revision of salaries in a period of six months.

In the middle of the negotiation process, Chentex asked the inspectorate to cancel the contracts of the union leaders for violation of Article 48(d) of the Labor Code and Internal Regulations, which provoked a massive work stoppage of 4 days which produced clashes with the police and between the two unions. The protest ended with a new agreement, including the reintegration of all of the workers except the union leadership.
The inspectorate recognized the request, justifying it as the acts of disobedience occurred after the notification of the request of the company. The General Labor Inspectorate Ad-Hoc, who in 1998 had delayed the registration of the union, decided not to accept the notice of appeal of the dismissed workers. This was followed by a second group of union leaders and in a staggered way hundreds of sympathizers.
Afterwards, 33 resignations, 21 firings, and 85 letters of disaffiliation from the union followed, totaling a loss of 139 persons from a total of 146 initial members. The company requested an inspection of the number of active members and a ruling from MITRAB stating that there remained only two, for which Chentex promoted the dissolution of the union in the Second Court of Labor.

At the same time, the first group of fired union leaders demanded their reinstatement and payment of salaries before the same court. After three months, the court resolved not to accept the complaint

based on the acts of disobedience after the request to cancel the contracts by the company, which the court interpreted as abandonment of work. The court of appeals reversed the sentenced and directed the reinstatement of the workers. Likewise, the court ruled on the force and privilege of fuero sindical. The motion to reconsider submitted by the company on April 5, 2001 was rejected.

The second group of fired workers also submitted a complaint for reinstatement. In response, Chentex initiated a criminal action against 11 workers in the 7th court of the criminal district of Managua for the events, accusing them of acts against freedom of commerce, among others.

**An out-of-court agreement**

During the hearings, the parties initiated negotiations. The will of the company to not comply with the sentence of the Court of Appeals provoked the signing of an agreement between the company, leaders of the union affiliated with CST-JBE, and the confederation. Chentex desisted the hearing for dissolution of the registration of the union and the penal action against the workers and the union leadership abandoned the labor demands of the second group, as well as the international campaign and the complaint filed in the ILO. The agreement left out of only 4 leaders. Nearly one moth later, the reinstated leaders resigned

**The Motion for Protection**

On June 29, 2000 the union leadership initially fired filed a motion of protection (amparo) to the court of appeals Almost 2.5 years passed from the filing of the motion to its decision. The constitutional court resolved not to accept the motion of amparo of the 8 union leaders and the case was declared over.

2. Chih Hsing Garments

The conflict started when 60 workers constituted the union Damarais Gonzales, affiliated with the CST. One day before their registration, the company fired four unionists and did not permit access to the installations, which produced a tense environment, resulting in management calling out the police and firemen. An illegal strike of 800 workers started, which ended 6 days later with the return of participants under the threat of termination.

When the union was registered by the DAS, the fired workers filed a complaint before the inspectorate. Two days later, the workers were directed by the inspector to be reinstated. Afterwards, the inspector accepted the motion for appeal by the company, which alleged that the complainants had not demonstrated that they enjoyed fuero sindical nor presented letters of their supposed termination.

Later the company fired the rest of the union executive, who filed their complaint with the labor inspectorate who decided not to accept it until the Inspectorate General sent out its unfavorable decision to the first group. In these circumstances, the directors accepted the compensation offered by the company. Only one leader filed a motion for appeal, rejected at the first instance alleging that his participation in the strike was illegal. Later, he introduced complaint for reinstatement before the 2nd labor court, which he withdrew signing his settlement.

For the registration of the union, the representative of the Federation Textil undertook the process before the DAS, being certified by its director one day later. The company opposed the registration,

but the DAS did not accept it as inadmissible, for which it was appealed and the Inspector General of Labor declared it void considering the evidence of the employer. With this, the executive committee of the union was left outside of the factory and the union inactive.

**New attempts**

A second effort to organize the union occurred in August. Thirty-three workers decided to reform the union executive board. However, they were not registered because they were awaiting the resolution on the motion of appeal that the company had filed against the previous board. A letter was sent to the Inspector General, explaining that when legal recognition was offered, the members existed because they had not been fired and requested not to accept the motion in opposition as inadmissible. This communication had indirect effects. The company did not present additional oppositions but some workers withdrew their signatures of support for the union. Finally, the second junta was not registered.

A new group of 47 workers elected yet another executive board. Again, they sent a letter to DAS reminding that their director had affirmed that the documents were in order and that for an increase of work they had not been able to register a new board. Later, the DAS was informed through various writings of opposition presented by seven participants of the general assembly, who disavowed their signature. Said oppositions were signed in the meeting with the legal representative and human resource manager of the company. Two of the signers, in testimony before CENIDH, said they did it under pressure and threats. The others admitted having met, but denied that they were pressured and assured that they had been deceived by the union. In this situation, CENIDH sent a letter t the inspector general asking not to accept the opposition

In the fourth attempt, 24 workers selected another board. Chih Hsing presented a document in which some of the attendees of the assembly refuted the election. It presented several cards, according to which some of the signers of the minutes had not been to work that day. The DAS did not accept the registration.

The secretary of the union filed its third complaint with Cenidh, who sent another letter to the labor inspector, setting forth the union's version, that the labor inspector conditioned the registration of the union with affiliation to the CTNa, alleging that the company had not wanted a union form the CST. They complained that the DAS incorporated the arguments of the company to justify the denial of the registration, with accepting the invitation of he union to attend the assembly of the workers on November 3 to investigate the situation in situ.

CENIDH met with the vice minister of labor, the inspect general of labor and the DAS, where they agreed, 1) that the union would renounce its motion of appeal against the denial of its registration; and 2) that the authorities of MITRAB would promise to permit the registration once presented with the required documentation. The same day, a union assembly was undertaken in the presence of an inspector of the DAS, who did not find defects in its development and in the election of the union leadership.

On November 18, the 5$^{th}$ request was accepted to register a new board. Four days later the DAS accepted the registration of partial reforms to the constitutive certificate and statutes.

In November, a new appeal from the company was submitted and five workers, participants in the assembly before the inspector general alleged that their signatures were false. The inspector accepted the motion of appeal and declared the registration void. The company also requested the cancellation

of the contract with the secretary general. The union remained inactive. In 8 months of conflict, 70 were fired, among leaders, members and sympathizers with the union.

3. Mil Colores (1998 to 2002)

**Reactivation attempts: Hand in hand with the fired leaders**

In January 2000, the company asked the Ministry of Labor (MITRAB) for permission to dismiss 50 people, citing economic problems. At the same time, 34 workers elected a new set of union leaders. The Secretary of the Federation presented documentation to the DAS. However, a commission of workers supported the list of workers who were to be dismissed.[1] Those who went to the assembly, including four union leaders, were on that list.

The DAS did not accept the request for registration on January 17 because the Secretary of the union had not personally presented it. That was quickly corrected. While the registration was still pending, the Departmental Inspector visited the company to deal with the company's request to be allowed to dismiss the workers, and the following day the contracts for those workers were canceled.

The restructuring of the union was refused by the DAS for not filling the legal requirements. The unionists appealed this decision, and the General Inspector declared the appeal void because most of the union leaders had been dismissed. At the same time, the company dismissed the union secretary based on Article 45 of the Labor Code, without requesting permission from MITRAB. The union thus was left inactive once again.
The same day, the union's Secretary General presented a complaint to the Departmental Inspector regarding his dismissal, which was not accepted because it was not presented by a lawyer. The rest of the union leaders also presented complaints to the Inspectorate demanding reinstatement in their jobs, but their appeals were deemed inadmissible because their names were included on the list authorized for dismissal by the Inspectorate.

There were attempts to suspend work, and the company called the police who prevented unionists from entering the factory. Seeking a solution, CENIDH arranged a meeting on January 25 with the manager, which was then cancelled by the company. Two days later, there was a conflict between former workers and the police in which 34 people were wounded (according to the company's account) and five were detained, including the secretary of the Federation and the union. CENIDH compiled testimonies and informed the police of the fact that the confrontation was based on a labor conflict.

At the same time, the company filed complaints with the police regarding the Federation secretary, the union secretary, and 60 other people. They started a criminal action against 18 union leaders before Court VIII, accusing them of being the intellectual authors of the conflict, and accusing 43 others of carrying out the crime. They accused these individuals of exposing people to danger, threats, forced robbery, and property damage. In this context, 117 more workers were fired.

An international campaign and the negotiations between company representatives and the union led to an agreement in October 2000 to reinstate 27 workers (not including the secretary general), the

[1] Alleging "poor productive efficiency, bad quality, lack of discipline, unjustified absence making the company fall behind in its shipments, payment problems, and payroll delays."

cessation of the criminal trial, and recognition of the union. This was partially complied with, and the persecution resumed only a few months later. In 2001, the workers held another assembly to reactivate the union and name new leaders. This was contested by the secretary of the CTN(a) union, with the support of written documents from the company. The labor authority did not register the union, arguing that the union had been inactive since February 1998 and that it could only be reactivated by the founding leaders. The authorities also noted that three of the leaders were no longer employed by the company.

The CST unionists appealed the decision, and the General Inspector revoked the Resolution and ordered the registration of the union The DAS certified the leadership changes. Nevertheless, the same day the CTN (a) union challenged the resolution and filed an appeal before the Ministry. Five days later, the Ministry reversed the decision and annulled the registration, arguing that the allegations had not been fully considered.

**The dismissal of the Secretary General**

In May 2001, the company requested permission from the Collective Conciliation leadership to cancel the work contract of Juan Carlos Smith, Secretary General, alleging that he had not fulfilled his obligations (Article 48, part d). The case was passed on to the Departmental Inspectorate, which refused to accept it because it lacked evidence of job abandonment. But five days later the company dismissed him based on Article 45 of the Labor Code, without authorization. Three weeks later, the union leader filed a complaint with the second labor court demanding reinstatement in his job. After nine months, the court ordered his reinstatement and payment of back wages on April 23. The judge took into account MITRAB's recognition of the union and the fact that union leaders couldn't be dismissed without approval from the administrative authorities. The court ordered compliance with the sentence, passing final judgment on May 14.

The company turned to the Labor Court of Appeals. In its allegations, the company said that it could not pay the back wages and that the delay of justice was the responsibility of the judge who was slow in arriving at a decision (violating Article 46 III of the Labor Code). With a decision from the Appeals court still pending, the parties signed an out-of-court settlement.

**New secretary general also dismissed**

While Juan Carlos was being dismissed, the workers restructured the union leadership, which was allowed by the DAS.[2] The CNT(a) union filed another challenge, but the authorities still registered the union. The secretary general resigned, and another board was elected, and registered four days later on October 11, 2001. Elia María Martínez assumed the position of secretary general, but this new leadership was challenged using the argument that the act was signed by people who no longer belonged to the company. The administrative authorities carried out another inspection and found that 26 of the 33 affiliates remained. Later, seven resigned, and so the DAS suspended the union. The workers appealed, but the Inspector General ratified the Resolution.

On January 28, 2002, 28 workers tried once again to reorganize the union. They reelected the secretary general and five other leaders, and presented the documentation to the DAS. The DAS director ordered the assembly participants to present proof of employment, and reminded them that an inactive union could only be reactivated with the concurrence of its affiliates according to Article 215

[2] For the period from June 19, 2001 to June 18, 2002

of the Labor Code. The union secretary requested an inspection of the payrolls to see if the participants were active workers. The following day, they presented a complaint to CENIDH.

The DAS confirmed that it had received the documents. At the request of the Departmental Inspector, who was aware of the unionist's complaint, the DAS clarified that he was a candidate for secretary general and therefore enjoyed protection from dismissal. Four workers challenged the registration and MITRAB reviewed the payroll, showing that ten of the 28 assembly participants no longer worked there and that 11 had resigned from the union, so that only seven affiliates remained. The union secretary requested a new inspection, but the DAS had already decided not to allow the restructuring of the leadership because it did not fulfill the legal requirements.

The workers appealed, and the Inspector General repealed the DAS Resolution and ordered the restructuring of the union.[3] The DAS extended the certification to January 2003. In May, they presented letters of resignation from two union leaders to the DAS, and the company requested another inspection. Once again, the DAS declared the union inactive.

In February 2002, the same day that the DAS director requested proof of employment from the assembly participants, the company dismissed the secretary general just after she had been elected, *for inefficiency in production, based on Articles 42 and 45 of the Labor Code.* She filed a complaint with the Departmental Inspector, arguing that she had been protected by her status as a union leader. She also said that the company had asked the DAS for a list of the people who participated in the January assembly. On May 17, the Departmental Labor Inspectorate agreed to review the complaint, but the company appealed and requested another inspection, and the General Inspectorate agreed to hear the appeal.
The Appeal filed before the Ministry of Labor against the Inspector General was not resolved, in contrast to the one lodged by the CTN(a) one year before when the Ministry published a resolution within five days that ordered the annulment of the union's inscription. Later, the worker filed a complaint demanding reinstatement before the second labor court.

While Juan Carlos Smith's appeal and María Elia Martínez's complaint were still pending, they both signed out-of-court settlements with their employer on December 11, 2002. The company agreed to pay 70,000 córdobas for social benefits, compensation, damages, and legal fees. The company also agreed to respect union leaders' right to protection from unfair dismissal and to provide facilities for union activities. The leaders agreed to desist from pursuing the legal cases and public campaigns, sending clarifying notes.

4. Presitex de Sébaco (2000 to 2003)[4]

**The conflict of 2000**

Just after operations began, a conflict arose between the employer and workers which led to a work stoppage in which half of the workers participated on April 25 and 25. Indeed, the employer asked MITRAB and the police to intervene, saying that the workers were damaging some of the equipment. The main demands of the workers were the payment of a minimum wage; an end to physical and psychological mistreatment from line supervisors and security personnel; respect of the 48 hour work

[3] The last inspection of April 4 showed that all of the people who signed the act were active workers
[4] Based on a review of CENIDH records and interviews with MITRAB in Matagalpa and other people who were involved

week, regulation of the 10 hour work days from Monday through Friday and the 6-10 hour workdays on Sundays; punctual receipt of Social Security papers; free transportation; salary payments for absences supported by medical documentation; and the reinstatement of workers who were unjustly fired for participating in the protest.

The conflict ended with an agreement on April 25 before the Departmental Inspector and MITRAB's General Inspector. A special inspection carried out in the following days found evidence of excessive, 12-hour workdays. It also found that 95 workers received an "apprentice" salary that was less than minimum wage; insufficient occupational safety and hygiene measures; and inconsistencies in the work contracts. Corrective measures were established, and most were complied with immediately: the 48-hour work week; a maximum of 3 hours of overtime daily and 9 hours weekly, with double payment, starting May 10; minimum wage for apprentices; the installation of protective measures by June 30; and informing workers of their insurance numbers by May 10.

The fired workers were not reinstated. Verbal mistreatment of workers continued in production lines 9 and 10. The company did not pay overtime for vacations such as Easter week. In a new inspection on June 22, at which the union was present, it was found that overtime limits, overtime pay for drivers, and safety measures were not complied with. It was recommended that the employer seek adequate solutions for job stability, and worker training to achieve quality, efficiency, and profitability.

In May 2000, 198 workers formed the "Ligia Maradiaga" union affiliated to the ATC. According to the company, the union had 450 affiliates. The unionists claimed the union had 685 affiliates. The firing of the union secretary and the partial incompliance with the agreement made after the first strike led to a second strike in August, which lasted three days. The company called the police when it appeared that both sides had engaged in violence. The General Labor Inspector declared the strike illegal. During the strike, about 400 workers were fired, including the union leaders, who were later reinstated.

The Departmental Labor Inspectorate of Matagalpa did a special inspection, which exposed old and new irregularities and violations:

a. The company did not give any of the workers copies of their employment contracts, violating Article 23 of the Labor Code. The company was given eight days to rectify that.

b. Many workers had not been given any vacation time, violating Article 75 of the Labor Code. The company was ordered to make a vacation calendar.

c. The workers work more than 8 continuous hours, violating Article 51. Shifts longer than 48 hours weekly were to be eliminated, and overtime hours couldn't exceed nine hours weekly, with prior written consent from the worker.

d. The Internal Regulations were applied without the prior authorization of the Labor Inspectorate (Article 255) so they were declared inoperative.

After two days of discussion, the union leaders and the company signed another agreement before the Departmental Inspector. The immediate agreements included a 50% salary increase, bonuses for punctuality, medical documentation, paying for scissors, transportation for overtime workers, and changes in pay dates.

The union leaders agreed to restart work. They also agreed that other demands, like a transportation subsidy, food for 10 córdobas, recognition of pre- and post- natal pay, revision of production goals, incentives for the ironing area, and the salary for transportation workers would be incorporated into a negotiation proposal.
At the end of the protest, 400 workers had been dismissed. A MITRAB delegation composed of the General and Departmental Inspectors visited the company. The same day, the employer signed another agreement agreeing to reinstate 20 workers and to study the other cases, which it later did. Nevertheless, the company continued to subject strike participants to verbal and physical abuse, unjustified dismissals, and obstacles to carrying out union activities.

**Convention, work stoppage, and changes**

In August, the union presented its list of demands for negotiations, which was refused twice by the Departmental Inspector. The negotiation of the collective bargaining agreement lasted 8 months with the direct and unusual participation of the General Labor Inspector. The later conflicts arose in the context of these negotiations, including the interruption of a half-day's work by 100 workers, which led to the firing of 24 participants. Of these 24 fired workers, six later resigned, and __ were reinstated.

After September 11, 2001, the company asked MITRAB for permission to temporarily suspend 816 contracts for four months, saying that there weren't enough orders. This was authorized with the permission of the union. Some believe that this measure was used as political pressure during the electoral campaign, to avoid an FSLN victory. Before the four months were up, the company reinstated almost all of the workers.

**Violations of the convention**

The union leadership was restructured in different assemblies. In a three-year period, there were four secretary generals. The last of the four held the position until he was fired in March 2003, along with the rest of the union leaders.

The Departmental Labor Inspectorate did two inspections, on May 21 and October 7, 2002, to verify compliance with the convention. The clauses that had not yet been complied with included eliminating physical and psychological abuse and providing a place for nursing mothers to feed their babies. In the January 23 meeting, the employer informed the union that a new pay system would be implemented in four production lines within four days. But the company refused to provide information on the prices that would determine the pay. The day that the new system went into effect, the company denied entrance to the union leaders. This situation was reported to the Departmental Inspector. The next day, another strike began, with workers alleging aggression against the secretary general, the unjust dismissal of two workers, and violations of the collective bargaining agreement.

On January 16, 2003, some 300 workers stopped working for four hours to protest the company's unwillingness to give paid vacation time. The company closed for two days, and the workers were left outside of the plant. According to the company, unionists cut the threads on the machines, causing severe damage. The company used this as an excuse to call in the Police. The Departmental Inspector and General Labor Inspector were present during the protest. They met with company representatives

and the ATC advisor, without including the union or CENIDH, despite the fact that CENIDH was present to take testimonies and attempt to mediate.

Later, company representatives met with MITRAB and MIFIC officials, the union advisor, the union and the Taiwan business representative, to attempt to come to an agreement. The company representatives, however, insisted on dismissing the union leaders.

This case resulted in several administrative and judicial processes:

a. On January 28, 2003, the company asked MITRAB for permission to cancel the work contracts of six union leaders, arguing that this would help bring "labor stability" to the company, and that otherwise they would have to close operations by July. The Departmental Labor Inspector[5] authorized the dismissal of four union leaders after reviewing a video presented by the company and the testimonies of more than 50 workers. Two other union leaders resigned during this process. The Resolution was appealed before the General Inspector, who refused to hear the appeal.
b. On April 27, the union leaders filed an appeal against MITRAB before the Appeals Court of Matagalpa, but it was refused.

c. During the second week of April, the fired workers filed a complaint demanding reinstatement and back pay before the second Civil court of Matagalpa. They also filed a complaint with the ILO, which was admitted. According to the union advisor and the union leaders, about 300 workers were dismissed between January 2003 and the present.

d. The company indirectly and directly promoted four lawsuits at the Sébaco local court against the union leaders. The first was a criminal action for damages; the second was a case for damages caused during the strike, with a total cost of more than 500,000 córdobas; and the third was a case for consignment that was not admitted. In the fourth case, two workers filed a suit against the union secretary for the surrender and approval of accounts.

### 2.6.2. Obstacles to Administrative Enforcement of Collective Rights

Again, CENIDH, in its investigation of labor rights in the maquila sector, made several observations with regard to the issue of enforcement. Accordingly, CENIDH found that the government of Nicaragua protects the rights of foreign investors before protecting the rights of workers, who are marginalized. To this end, the Ministry of Labor (MITRAB) does not fully enforce the law. Additionally, the administrative authorities are limited, as they are able to fine violators of labor norms but have no power to enforce the penalty. The authorities also lack the material and human resources to adequately attend to conditions in the EPZ companies.

In the 2003 "Perspectives on Foreign Investment and Labor Rights in the Nicaraguan Maquilas" Forum, the Ministry of Labor provided information on inspections carried out in 62 maquiladoras, where they looked at labor relations, work contracts, working hours, rests, vacations, salaries, discipline, occupational safety and hygiene, collective bargaining agreements, and the right to social security. The inspectors made a total of 75 visits to these 62 maquiladoras in four years, even though

[5] Resolution from March 3, 2003

the law establishes the need for periodic visits.[6] These inspections revealed 243 infractions that require follow-up.

There are 82 inspectors in the country, for both private and public companies. According to the former General Labor Inspector,[7] MITRAB only did one annual inspection in each company. Reinspections happen only when complaints are filed. He also stated that the companies put everything in order before the inspections occur, even changing the way they treat workers and providing protective equipment, so that the inspectors cannot verify the complaints.[8]

In recent years, more than 15 former MITRAB officers have left their positions to move to EPZ companies. This situation could come from trafficking of influences, an idea recognized by the ex official who affirms that "in order to avoid running the risk of having inspectors establish connections with company managers, they rotate every 4 months."

**Registration and restructuring of unions**

With few exceptions, the different MITRAB branches did not respect, protect, or guarantee the right to freedom of association and protection against unjust dismissal for union leaders. On the contrary, MITRAB's biased actions favored the violation of these rights. Indeed, MITRAB violated legal procedures on registering unions numerous times when it admitted new complaints and appeals filed in the cases of Chih Hsing Pequeña and Mil Colores.

With regard to the cases set forth above, there were the following violations in the registration process:

a. The DAS violated the 10-day time limit for registering the Chentex union (1998), which contributed to the dismissal of union leaders and new challenges.

b. The DAS and the Inspector General accepted the presentation of challenges to union registration, even when they should have been considered inadmissible. In Chih Hsing and Mil Colores, the unions already had legal status when the questioning began; in both cases the DAS should have refused them and recommended the judicial route.[9]

c. The Inspector also allowed the presentation of appeals by the employer or workers protesting the registration of the union, declaring the registration null, despite the fact that the law does not allow for appeals after the DAS agrees to register the union. This law was violated in Chih Hsing and Mil Colores.

In Mil Colores, the Ministry accepted an inadmissible appeal filed by the CTN(a) union against the Inspector General's resolution. Despite the fact that the administrative route was exhausted with the Inspector General's resolution, the Ministry annulled the union's registration without hearing the

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[6] Article 14 of the Regulations for Labor Inspectors, February 20, 1997

[7] Interview published in "Labor and human rights conditions of workers in the Saratoga Free Zone", CEPS, 2003

[8] "A la Inspectoría del Trabajo se le critica porque anuncia con antelación sus visitas de supervision," Human Rights Situation of Nicaraguan Workers, Procuraduría para la Defensa de los Derechos Humanos 2002

[9] Only Chentex promoted the dissolution of the union before the Labor court, but they did not win because an out-of-court settlement was reached.

arguments of the union leaders. Nevertheless, one year later, when the then-secretary of the CST-JBE union filed a similar appeal before the Ministry, it was not resolved.

d. The challenges were accepted without investigating the truth of those allegations.

When Chih Hsing presented various entrance cards, which showed that some of the signers to the union documents had not worked that day, the DAS did not note the fact that these cards could be produced at a later date. Four challenges were presented by groups that had signed the documents in Chih Hsing and Mil Colores, and the three filed by the CTN(a) in Mil Colores. However, most of these challenges should have been considered inadmissible because the union already had its legal status. Additionally, the administrative authorities should investigate whether or not the challenges were fully voluntary or whether they were the result of pressure, blackmail, coercion, or threats from the employers. In Chih Hsing Pequeña, the General Labor Inspector heard seven workers confirm that the challenge to the union registration had been prepared by the employer and signed in his presence. But the Inspector still did not refuse to accept the action, despite the fact that two of the workers said they had been pressured into filing it.
Furthermore, in cases of dismissals and mass resignations that occur just after the creation of a union, the causes were not investigated, even though all indications pointed to pressures from the company. In Chih Hsing Pequeña, MITRAB did not accept the invitation to attend the union assembly to verify it, but it did later agree to hear the challenge. MITRAB also did not investigate the hidden motives for the challenges filed by the CTN(a). On the contrary, they accepted allegations that should have been considered inadmissible.

e. On some occasions, MITRAB used arguments outside of the Labor Code whose only purpose appeared to be to impede the registration of a union or pro-Sandinista union leadership at any cost. In Mil Colores, the DAS did not accept the registration of the leadership of a union, though it lacked a legal basis for refusing. It alleged that "it can only be reactivated by its founding leaders."

**MITRAB and the right to protection for union leaders against unjust dismissal**

With few exceptions, the dismissals of union leaders in Chentex, Chih Hsing Pequeña and Mil Colores were supported and/or authorized by the Departmental Inspector and the General Labor Inspector.

a. There is no explanation of how the employer obtained the information to dismiss union leaders just a few hours or days after the union requested registration or restructuring. Different sources indicate that MITRAB and DAS officials were responsible for filtering information on new unions to the CST and CST-JBE, including the names of those who participated in the assemblies.

That is why the February 8, 2002 DAS resolution is worrisome. It orders participants from the constitutive assembly of the Mil Colores union to present proof of employment. In addition to violating the law and exceeding the authorities' legal functions, it also led to the dismissal of the union leaders. The next DAS director (no longer in that position) admitted that MITRAB had acted outside the law,

for instance when inspectors allowed lists of union leaders to reach the hands of the employer. She also recognized the existence of internal attempt to end that practice.[10]

b. With only one exception, the resolutions from that authority have been unfavorable for the fired union leaders, and the authorities have not done in-depth investigations of the conflict or heard allegations from both sides.

When the company claimed just cause and requested permission to cancel workers' contracts, MITRAB generally authorized the dismissals. In Chentex, the Departmental Inspector and the General Labor Inspector alleged acts that showed a lack of discipline, despite the fact that these acts happened after the request was filed with the DAS. This was not taken into account, and the authorities heard the testimony of workers who were economically dependent on the company and thus could be expected to declare in its favor.

In the Chih Hsing and Mil Colores conflicts, the branches of MITRAB clearly acted together. On the one hand, MITRAB repeatedly refused the union's applications for registration or annulled previous registrations. Meanwhile, they authorized the dismissal of union leaders. In most cases, MITRAB violated its function of protecting union leaders from unjust dismissal, by allowing union leaders to be fired based on Articles 42 and 45 of the Labor Code.

The Departmental Inspectorate annulled the dismissal of the first group of Chih Hsing workers, but the General Inspector revoked that decision because letters of dismissal were not presented and the dismissed workers did not have protection as union leaders. The second group's complaint was also refused because the authorities did not know that the union was registered in the DAS and that the union leaders should therefore have been protected against unfair dismissal. Given these circumstances, it is not surprising that the Labor Vice Minister's missive did not have any effect when it lamented the "intransigence of some Chih Hsing administrative employees who didn't make even a minimal effort to find common ground for an agreement."[11] The actions of his own Ministry contradicted his words.

In Mil Colores, the Departmental Inspector refused to review the complaint filed by the first fired union secretary, arguing that it had not been signed by a lawyer. Additionally, the Inspector authorized the cancellation of 50 labor contracts for economic reasons, without investigating the truth of the employer's claims, and despite the fact that the list included four union leaders. Meanwhile, the DAS refused to register the union. Later the Departmental Inspector refused to authorize the dismissal of the second union secretary. The company went ahead with the dismissal anyway, justifying its decision based on Articles 42 and 45, alleging that the worker had failed to complete his duties, although the pay records show high levels of production. The secretary's protection as a union leader from unjust dismissal was ignored.

The "combination" (or rather, confusion) of the resolutions issued by these authorities is obvious in the case of the last fired union secretary. The Departmental Inspector took three months to resolve in favor of María Elia Martinez's complaint. Three months before, the General Inspector had refused the complaint, not acknowledging her protection as a union leader. The General Inspector had already decided in favor of the company. MITRAB did not place importance on the fact that the union

[10] Nevertheless, recent complaints from union leaders in Roo Hsing, Hansae and Yu Yin demonstrate that information continues to be filtered to employers. In Yu Yin, the union was created on a Friday; on Monday afternoon the leaders presented the documentation to the DAS, and two hours later they were fired.

[11] Communication sent to Chih Hsing, July 22, 1999

secretary was fired only days after being elected secretary general. She was accused of being inefficient in production, but she had worked for two years without her production or discipline being questioned. The fact that the company later offered to reinstate her shows that she was not a bad worker.

c. MITRAB's practice of authorizing the liquidation of union leaderships of the CST or CST-JBE had discouraging effects for the workers, because they lost trust in the impartial functioning of the administrative authorities. Many of the union leaders fired from Chih Hsing did not file any complaints or appeals, because they did not trust MITRAB officials.

For the same reason, hundreds of union affiliates and sympathizers who were fired from the three companies (based on Article 45) did not try to defend their right to job stability. The actions of the administrative authorities in three cases contributed to the employer's ability to prevent the CST and CST-JBE unions from participating in collective bargaining.[12]

d. MITRAB interfered with the rights of the workers. It tried to discourage and pressure unionists to accept compensation from the employer in exchange for their resignations. In Chentex and Chih Hsing Pequeña, the General Inspector played an active role in asking fired union leaders to sign out-of-court settlements, behind the back of the secretary of the union Federation.

e. MITRAB did not act against the employers' practice of refusing to contract unionists fired from other companies, or of firing them when they discover their "union past". The blacklisting is a reality, but despite the frequent complaints, it has not been investigated by labor authorities.

**Cover-ups in compliance with collective bargaining agreements[13]**

In Chentex, this authority did not work on any paperwork or proceedings for six months. When the employer finally showed up for the negotiation, it requested –after two days- the cancellation of the union leaders' contracts. The General Labor Inspector gathered the Chih Hsing Pequeña union leaders together regarding the negotiations demands, despite the fact that he had no authority to do so. This happened at the same time that the employer called a similar meeting, to encourage workers to resign from the union. It appears that the objective of MITRAB's meeting, which the employer did not attend, was to ensure that the unionists were absent from the company.

In Chih Hsing, MITRAB rejected the union's negotiation demands document various times, arguing that the union had not been registered. At the end of 1999, the General Inspectorate declared that the negotiation request was inadmissible because at the moment it was introduced, the union did not have its legal status. In issuing this decision, the Inspectorate accepted the employers' logic and paid no attention to the fact that the DAS had ordered the registration of the elected union leadership two weeks earlier. When MITRAB finally summoned the parties, it pulled a series of maneuvers at the last minute aimed to prevent the participation of the CST union. The MITRAB document shows that it did not notify the CST union because the employer was not in agreement. As a result, the CST union never participated in the negotiations despite the fact that the Departmental Inspectorate had admitted it on two previous occasions.

[12] Chentex 2000, Chih Hsing Pequeña in 1999 and 2000

[13] According to MITRAB data presented at the Maquila forum, between 1997 and 2002 there were 12 collective bargaining agreements signed, 6 with the CTN(a) and the others with the CST, CAUS, CTN, CUS, ATC, CST/CAUS.

In Presitex, the Departmental Inspectorate of Matagalpa played a belligerent role in the conflicts of 2000. It did various inspections and reinspections, verifying the irregularities that had been denounced by the workers, and supporting the signing of an agreement. After the personnel change, and in the context of conflicts over compliance with the collective bargaining agreement, the Inspectorate changed its posture, which provoked protests and later the dismissal of union leaders.

### 2.6.3 Obstacles Judicial Enforcement of Collective Rights

The labor courts violate the right to due process. Some sentences contain noteworthy considerations regarding the scope of *fuero sindical* and job stability.

**Judicial delays violate the right to rapid justice**

The Chentex and Mil Colores[14] trials proceeded with delays, violating the right to rapid justice and due process, with grave economic consequences for the fired union leaders, given that they did not receive salaries during the legal process. The case regarding the nine Chentex union leaders took almost three months, despite the fact that Labor Code Article 46 establishes a limit of 30 days. The same problem happened in the appeals court, which took 8 months to arrive at a decision (in contrast to the 60 days required by law). The judicial delays were worse in the next appeals trial, since the Supreme Court took two and a half years to issue a decision, although Article 47 of the Ley de Amparo establishes a limit of 45 days.
In Mil Colores, the two cases also suffered delays. In the case of Juan Carlos Smith, the Second Labor Court took nine months to arrive at a decision. In the case of Maria Elia Martinez, there was still no decision by the time the out-of-court settlement was signed, six months after the case was filed. The company appealed the sentence, alleging that it was unable to pay Smith's back wages, and that the delay was the judge's responsibility for not issuing a sentence during the legally established time frame. This demonstrates the bad faith of the employer, because outside of the appeal it was signing an out-of-court settlement. If the Court had accepted the appeal, it would have been the worker who would have to "pay for the plates broken as a result of the judicial delays", despite having obtained a favorable sentence. Only Karla Manzanares' labor case against John Garment was resolved during the legally established time frame.

**Sentences and compliance**

In Chentex, the Second Labor Court declared the union leaders' case inadmissible, violating their right to equality before the law because employer witnesses were given more credibility. The court did not value the evidence presented by the unionists, but they did examine the company's evidence, which included the testimony of workers who were economically dependent on the company (the law has prohibitions against this). The court's decision was based on incidents that occurred after the company solicited the cancellation of the unionists' contracts, and did not acknowledge their right to protection from unjust dismissal due to their status as union leaders. The court also did not consider the fact that the leaders were participating in salary negotiations, which means that any dismissal should have been authorized by the Collective Negotiation office and not by the Departmental Inspectorate.

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[14] In Chih Hsing, only Eunice Montoya filed a case demanding reinstatement, which she later gave up. In Presitex, the last trials were not included in this research because they were introduced after the interviews.

The second level court's decision did value the proof presented by the union leaders, concluding that the company had not proven a lack of discipline, and determined that the workers must be reinstated. The Appeals Court emphasized the strength and privileges of freedom of association and *fuero sindical*. It alleged that the guarantee of job stability for union leaders to enable them to carry out their activities is justified by the fact that "union leaders have to assume positions contrary to company owners' positions during negotiations, because they aim to change many measures, including disciplinary sanctions, and satisfy different complaints held by personnel. All of these tasks involve confrontation and occasionally roughness. *Fuero sindical* aims to prevent employers from taking hasty actions against the union leaders. Union representatives represent the interests of affiliated workers to the company. That is why these leaders need protection from possible anti-union actions."

The Appeals Court clarified that Article 46 of the Labor Code establishes the general rule that the employer can choose between reinstating the worker and paying double compensation when the worker's dismissal is declared illegal. But when "the fired worker is a union leader and when there was no just cause for the dismissal, as in the present case, it is the worker who gets to choose between these two options, and if the worker chooses reinstatement, the employer must oblige." Unfortunately, the employer did not intend to fully comply with this sentence. Instead, as a result of pressures, the parties signed an out-of-court settlement. Only four leaders were reinstated. They could not put up with the coldness with which they were then treated, and they quit in less than one month.

In terms of the Appeals, the Supreme Court used incorrect criteria in its sentence. It assumed that the recurrents did not specify how the authorization of their dismissals continued to harm them, leaving it unclear whether or not MITRAB's actions violated their constitutional rights. It assumed that probable damages had been overcome by the "Agreement to pay social benefits, seniority benefits, and back wages" signed by Chentex and the union leaders as a part of the agreement. With that, the Court combined two separate things: the agreement ended the work relationship between the two parties, but the appeal tried to evaluate MITRAB's actions where of course there is still interest in investigating what happened even if only to avoid it happening again.

In Mil Colores, the second Labor Court ordered the reinstatement of Juan Carlos Smith and the payment of back wages, basing the decision on his protection as a union leader from unjust dismissal. MITRAB had refused to authorize the cancellation of his work contract because it was illegal for the company to use Article 45 in that case to justify dismissal.

The differing opinions and sentences with respect to the scope of this Article show the need for a Superior Labor Court that can unify criteria so that it is uniformly applied by administrative and judicial authorities.
The Federation affiliated to the CTN(a) affirmed that "Article 45 is the option the employer has to fire a worker, and it can only go to the courts in cases of workers who are pregnant, on vacation or subsidy, or unionists. For that reason, these companies frequently apply Article 45 when they fire workers, to try to avoid having to go to the courts."

On the contrary, this Article should be interpreted in a restricted sense in order to protect the constitutional right to job stability, and to allow the fired worker to turn to the courts. It does not allow the employer to dispense with the worker's services whenever he wants. It actually establishes a sanction (payment of indemnization for years of service) when the employer fires a worker without

just cause. The indiscriminate application of this Article in order to fire union affiliates and sympathizers is contrary to national and international norms that protect the right to work and the right to job stability.

The criminal cases in the Chentex, Chih Hsing and Mil Colores conflicts were filed by the employers and show retaliation against workers who tried to defend their rights through judicial processes. In these processes we can see the uncommon speed with which the judges investigated the complaints. They did not end up issuing sentences, because out of court settlements were signed.

In Karla Manzanares's case against John Garments, the First Labor Court issued a sentence saying that she had not proven that the company denied permission to visit a doctor. This contradicts MITRAB's inspection report, which did find evidence of such a denial. Nevertheless, the Court ordered her reinstatement, because the employer did not solicit authorization from MITRAB before canceling her contract.

In the criminal case against two company officials for exposing people to danger, the third local criminal court absolved them four months after the case was filed. This sentence was inconsistent with the law and with the results of MITRAB's inspection. Despite the fact that it established the fact that the abortion happened inside the company, it was not considered a proven and true incident, nor did it identify those responsible for these tragic results. Just as in the Chentex case, the court based the decision on the testimony of dependent workers, and not on the declaration of the inspector. Karla filed an appeal before the third district criminal court, and has been awaiting a decision for more than one year.

**2.6.4 The strategy of the employers:**

*Firing and threats to close the factories*

Once formed, union leaders are almost immediately fired. The methods are varied: in some cases, the permission to cancel the contracts before the inspectorate is requested, recognizing that it concerns union leaders. In others, the company requests the massive cancellation of contracts "for economic reasons." There were situations where the employers did not request such authorization and fired workers arbitrarily and illegally, paying them simply their labor benefits.

*Disintegration of the executive committee*

The offer of large sums of money to disaffiliate the leadership from the CST and leave the union inactive was another practice. In three cases, the unionists finally accepted the employer's proposal and the result of multiple pressures.

*Criminalization of labor struggles*

In three cases, the employers requested the e support of the police. In Chentex and Mil Colores. there were detentions.

*Black lists*

Any suspicion that the workers are linked with the CST is sufficient for justifying termination. Former unionists noted that the companies in the Las Mercedes FTZ circulated a black list of the fired leadership and no company hired them. In a few cases where they were able to enter another maquila, they were fired as soon as they were identified.

*Promotion of the CTNa*

In Chentex, Chih Hsing, Mil Colores and Presitex, the CTNa was promoted as a way to counter the CST

**3. Elimination of Forced Labor and Compulsory Overtime**

**3.1 National Laws and ILO International Conventions**

Convention 29 regarding Forced or Obligatory Labor designated as forced or obligatory labor all work demanded of an individual under threat of punishment. However, this definition does not include such obligations as military service; work or service that is part of normal civic obligations; work or service exacted as a consequence of a conviction in a court of law; work exacted in cases of circumstances beyond our control; and minor communal services.

Convention 105, regarding abolition of Forced Labor, obligates all ratifying members to suppress any form of forced or obligatory labor, and at the same time obligates them to take effective measures for complete and immediate abolition of forced or obligatory labor.

In Article 40 of the Political Constitution of Nicaragua, it is established that no one shall be submitted to servitude. Slavery and any other such treatment is prohibited.

Since 1945, with the entrance into law of the previous Labor Code, the following provisions had been revoked:

a) The chapters of Police Regulations that had authorized capture of those workers who had received monetary advances from their future agricultural employers and who had not presented themselves for work. They had been captured and then handed over to their employers so that they could pay with their labor the money they had been given in advance.

b) The February 1936 law that had prohibited payment with things other than legal tender, to avoid land-owners paying with vouchers or tokens that could only be exchanged for merchandise in their own commissaries.

**3.2 Principal Changes in Labor Legislation over the Last Five Years**

The 1997 Labor Code, in Articles 196 and 197, regulates prison labor, which has limits:

a) In the first place, work is voluntary for the offenders
b) They are paid a salary which is never below the legal minimum for the activity carried out.
c) The work-day in prison is always shorter by at least one-fourth than the work-day considered in the Labor Code.

This type of work has been favorably looked upon by offenders and their families because it gives the offender an income while in jail with which he or she can help his or her family. Work is considered part of the offender's treatment or reconciliation, leading towards their later reinsertion into society.

As for compulsory overtime, the Labor Code determines in Article 58 three hours daily and nine hours weekly as the limits for overtime. This issue is addressed more fully in the final section of this report concerning decent work.

### 3.3 Principal Obstacles to the Fulfillment of Labor Laws

The principal obstacle is the principle of reality, because as a result of low salaries, workers themselves arrange to work overtime beyond the limit established in Labor Code Article 58. This infraction is not reported to Labor Inspectors, and if these Inspectors learn of it they will not consider it a failing of the company.

### 3.4 Problems in Working Conditions Caused by Non-Compliance with the Law

For prison labor there is no major problem. As for working overtime, this impacts workers' health negatively, limiting their rest and with it their ability to restore energy. In the medium term, this leads to reduced productivity in their work, reducing as well the incentive pay they receive for high production and forcing them to seek during legal overtime hours the economic income they lost because of this reduced productivity.

## 4. Elimination of Child Labor

### 4.1 National Laws and ILO International Conventions

ILO Convention 138, regarding the minimum age for employment, established the minimum age for all employment or work that by its nature or the conditions in which it is carried out could be dangerous for the health, security or morality of minors as no younger than eighteen years of age. It also stipulated that work can be authorized beginning at sixteen years of age, as long as the health, security and morality of the adolescents are fully guaranteed.

Convention 182 deals with elimination of the worst forms of child labor and taking immediate action to eliminate it. The Convention prohibits:

a) All forms of slavery, such as the selling or trafficking of children; forced or obligatory labor, including forced or obligatory recruitment for use in armed conflicts.
b) Use, recruitment or sale of children for prostitution, production of pornography, or pornographic activities.
c) Use, recruitment or sale of children for illicit activities, especially production and trafficking of mind-altering drugs.
d) Work that by its nature or the conditions in which it is carried out probably will cause harm to the health, security or morality of children.

Constitution:

The Nicaraguan Constitution establishes in Article 71(2) that children enjoy special protection and all the rights their condition requires, for which reason the International Convention for the Rights of Boys and Girls is fully in effect. Also, Article 84 establishes that child labor in jobs that could affect normal childhood development or the obligatory school year is prohibited. Children and adolescents will be protected from any form of economic and social exploitation.

Labor Code:

Law 185, which took effect on December 31, 1996, set forth Title V, named "The Labor of Children and Adolescents," regulates the conditions of work for children in Arts. 131 to 137 of the Labor Code.

- Article 131 of the Labor Code establishes that the minimum age for work will be fourteen years old. The Labor Inspector-General will regulate exceptions.

- Article 132 establishes that the State, employers and families are obligated to protect boys, girls and adolescents – preventing them from carrying out any activity or work that would do damage to their education, health, physical or intellectual or moral or spiritual or social development.

- Article 133 further establishes that the performance by adolescents, boys or girls of unhealthy work or work with moral danger – such as work in mines or underground; work as garbage-collectors; work in nighttime entertainment venues; work that involves handling psychotropic or toxic objects or substances; and work that is at night in general – is prohibited. This prohibition also includes all those less than eighteen years of age. It is in complete accordance with Article 3 subsection D of the Convention.

- In Article 134, the labor rights of boys, girls and adolescents are established. Among them are:
    - Working conditions that guarantee physical security, health, hygiene and protection against professional risks.
    - A workday of no more than six hours per day and 30 hours per week.
    - Social security benefits and special health programs.
    - All other rights stated in the Code and other rights emanating from Article 3(d) of the Convention.

In 1993, the Nicaraguan Government and the International Labor Organization (ILO), as part of the International Program for Eradication of Child Labor, signed a memorandum of understanding. This memorandum established the following actions to be taken by Nicaragua to eradicate child labor:

- Analyze the situation of child labor in the country.
- Develop and implement a national plan for a campaign against child labor.
- Establish and carry out policies for the prevention of child labor, for the protection of working boys and girls, and for the abolition of child labor.
- Develop national programs that integrate local actions with actions on a sectoral level and regarding specific occupations.
- Give special attention to boys and girls who work in:
    - Unacceptable conditions or conditions that violate fundamental human rights
    - Dangerous conditions or activities

**4.2 Principal Changes in Labor Legislation over the Last Five Years**

Decree #22-97, published in Journal #66 of April 10, 1997, created a National Commission for the Progressive Eradication of Child Labor and for the Protection of Working Minors. The commission is made up of State entities, employers' representatives, workers' representatives, and representatives of non-governmental organizations working on children's issues. The ILO and UNICEF are permanent advisors to the commission.

Later, in 1998, Decree #71-98 of Law 290 created a Directorate for Inspection of Child Labor. Its function is to supervise, monitor and control fulfillment of labor regulations regarding child labor, as well as to investigate denunciations made by working boys, girls and adolescents. The Directorate also trains Labor Inspectors on these matters; guarantees through its inspections fulfillment of the labor rights of working boys, girls and adolescents; gives technical support to the National Commission for the Progressive Eradication of Child Labor and for the Protection of Working Minors; educates employers and workers about this topic; and promotes tripartite approval of Codes of Conduct guaranteeing the rights of boys, girls and adolescents.

In 1998, Law 287, Code of Childhood and Adolescence, the most recent law relative to childhood and adolescence, having as its foundation the Convention on the Right of the Child, entered into force.

The First Book:

Capital II, Article 26 states:

The young and adolescent have the right from birth to grow in a familiar atmosphere that permits their integral development. The familiar relations rest in the respect, solidarity and absolute equality of responsibilities between the fathers and the mothers. The fathers and mothers have right to the education for their children and the duty to take care of the maintenance of the home and the formation of the children by means of common effort, with equality of rights and responsibilities. In case of physical, psychic, moral mistreatment and sexual abuse or exploitation of the children adolescents by their parents, tutors or any other people, could be judged and sanctioned in agreement the penal legislation."
This article establishes an explicit prohibition to transfer to the children the responsibilities of the adults.
Capital III, relative to the right to health, education and social security, in Article 43 declares;

The children and adolescents have the right to an education oreinted to develop to the maximum of their possibilities, their personality, aptitudes and physical and mental capacities.....El state will assure to the children and adolescents the gratuitous and obligatory primary public education, in conditions of equality for access and permanence in school. No boy, girl and adolescent will be without the right to matriculate, take examinations or to receive notes or diplomas for economic reasons in the Centers of State Education. The breach of the present clause on the part of the authorities, civil employees and public employees will be sanctioned in conformity to the corresponding legislation

The Second Book

Chapter I, Article 72 states:

Mothers, fathers or tutors are prohibited from handing over to third parties, sons, daughters or pupils in exchange for payment or compensation. The disobedience of this prohibition entails criminal responsibility.
Chapter II, Article 76, establishes child labor and the economic exploitation as one of the situations in which children require of special protection.

More specifically, Article 73 of this Code, states:

It is prohibited to use children and adolescents in any work. Companies and natural persons will not be able to hire minors under 14 years, articulating coherently with the commitments acquired by the country, by means of the ratification of Agreement 138 of the ILO. With relation to the work of adolescents article 74 of the Code, indicates: "adolescents will not be able to carry out any type of work in unhealthy places and at risk for their life, health, physical, psychic or moral integrity, such as work in mines, subterranean, dumps, nightclubs, those that imply use of toxic substances, and night work in general"
The Code still is more specific with the work of the adolescents, indicating in Article 75:

In the cases in which adolescents are allowed to work, will the following norms will be observed:

To receive instruction adapted to the work that is carried out

To receive medical examinations at least once a year in order to determine if the work reduces his health or normal development

To guarantee the continuation of its educative process.

Also article 75, reaffirms the responsibility of the Ministry of the Labor for the supervision and guarantee of the fulfillment of the dispositions established for the protection of adolescents, set forth in the Code of Childhood and Adolescence, as in other laws and regulations.

In 1999 agreements were signed with the owners of nighttime entertainment venues in Managua, León, Matagalpa and Jinotega departments. The owners agreed not to contract children less than 14 years of age in their businesses. Later a similar agreement was reached with the owners of EPZ businesses and another with employment agencies in Managua department.

An analysis comparing national and international norms on these matters was conducted. It concluded that it was necessary to reform Title VI of the Labor Code, which addresses this topic, due to a contradiction regarding classification of child labor. This proposal would take up again what had been established in Law 287 regarding children and adolescents, separating them by age, calling those between 0 and 13 years old children and those between 13 and 18 years old adolescents. It is worthwhile to note that this proposed reform has been developed and it only needs to be presented to the National Assembly for approval.[15]
Law 474, published in Official Journal #199 of October 21, 2003, reforms the Chapter referring to protection of working children. The reforms are:

- The minimum age for work is ratified as 14, suppressing faculties that labor inspectors had been granted to establish exceptions.
- The legal capacity of adolescents age 16 or older to sign labor contracts is recognized.
- The prohibition on using adolescent workers under specific circumstances is expanded to:
    - Nighttime entertainment venues and other places that by their nature damage dignity and human rights;

[15] As part of the process of legal adjustments to establish coherence with the process of prevention and eradication of child labor, the CNEPTI did an analysis of all the legal norms relative to child labor in order to harmonize them internally and with the international commitments ratified by Nicaraguan. A proposal to reform the title VI of the Labor Code was drafted, establishing that only the labor of adolescents of 14 years or older be recognized, without exceptions to the minimum age. Consequently the reform is denominated "Adolescent Work." First, the reform proposal regulates the protection of adolescents who work and tsecond it refers to the type of work and the labor conditions which one sets forthg concerning the worst forms of child labor contemplated in Agreement 182 of the ILO. Also, the proposal includes sanctions, contemplated in Article 135.

- Situations where adolescents could be exposed to physical, psychological, or sexual abuse; or to commercial sexual exploitation;
- Jobs carried out underground, underwater, at dangerous altitudes, in closed spaces with very high or low temperatures, or with high levels of sound or vibrations that could do physical or psychical damage.

### 4.3 Principal Obstacles to the Fulfillment of Labor Laws

The principle obstacle to fulfillment of these prohibitions on child or adolescent labor is the reality of unemployment and the low incomes received by families. In the agricultural sector, large numbers of minors participate in the harvest of coffee, cotton and banana. They help their parents, increasing the quantity harvested to increase income. During coffee harvesting season, there is a shortage of adult labor. Usually if a Labor Inspector visits a coffee estate and sees hundreds of minors working, he or she will overlook this and not report the infraction.

The same occurs in urban life, where minors' labor is mostly focused in sales of cold water, refreshments, gum and candies at bus stops, as well as washing vehicles' windows at stop lights. On various occasions the government has announced drastic measures to prevent children from this work at stop lights and on buses, but without a means for creating employment such measures will never deal with the cause that produces child labor.

### 4.4 The Face of Child Labor in Nicaragua

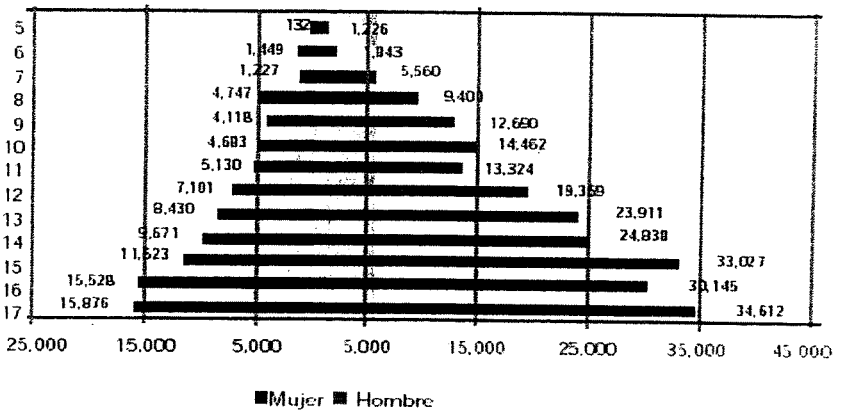
In 2000, ILO/IPEC undertook an in-depth survey of child labor in Nicaragua entitled the "Encuesta Nacional de Trabajo Infantil. The relevant findings of that report are summarized below:

How many child laborers are there?

Approximately 314,012 children and adolescents between the ages of 5 and 17 have worked sometime in their life, a number which represents 17.7% of the total population of 1,772,614 children in that age group. The number of children and adolescents currently working is 253.057. The remainder, 60,955, had worked before or work during specific periods or during harvest. With relation to gender, 224,397 of these workers were boys (71,5 %) and 89,615 were girls (28,5 %). With regard to residence, 115,367 (36.7%) belong to urban areas and 198,645 (63.3%) rural areas.

Gráfico #4

Niños niñas y adolescentes trabajadores entre 5 y 17 años

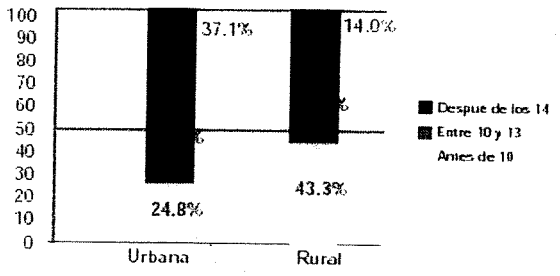



Fuente: ENIIA 2000

As apparent from this chart, children between the ages of 12 and 17 make up 74.5% of the population of child laborers. Importantly, 44.2% of the working children were below the minimum age of employment (14 years).

**At what age do children begin to work?**

Of the children interviewed, 36,5% responded that they started before 10 years of age; 41.1% between 10 and 13 years; and only 22.4% stated that they were 14 years old. This shows that 77.6% initiate working before the age of 14, again in contravention to national labor laws. With regard to geographic distribution, children in the rural areas started to work at an earlier age than those in urban areas, as the following chart shows.




**How many hours do they work and which shifts?**

Of the children interviewed (see below), 76.1%, said that they worked the day shift, of this 74.29% were boys and 25,71% were girls. This of course means that they do not attend school with regularity. Of note are the 135 children who said that they were always working, which is a situation of permanent exploitation without any possibility of living out their childhood, contravening all of the international and national commitments in the matter of human rights of the child.

| Jornadas de Trabajo | Cantidad | % | Hombre | Mujer |
|---|---|---|---|---|
| | | | Distribución porcentual | |
| Durante el día (6 a.m. – 7 p.m.) | 238,937 | 76.1 | 74.3 | 25.7 |
| Tarde / noche (1 p.m. – 12 p.m.) | 4,622 | 1.5 | 65.5 | 34.5 |
| Noche / Madrugada (8 p.m. – 6 a.m.) | 882 | 0.3 | 93.6 | 6.4 |
| Madrugada / Mañana (1 a.m. – 12 m.) | 484 | 0.2 | 65.9 | 34.1 |
| Día, y tarde y/o noche | 3,850 | 1.2 | 61.3 | 38.7 |
| Día, y noche y/o madrugada | 1,825 | 0.6 | 86.3 | 13.7 |
| Día, y madrugada y/o mañana | 1,586 | 0.5 | 76.0 | 24.0 |
| Tarde y/o noche y/o madrugada | 71 | 0.0 | 100.0 | 0.00 |
| Noche y/o madrugada y/o mañana | 175 | 0.1 | 100.0 | 0.00 |
| Todas las jornadas | 135 | 0.0 | 100.0 | 0.00 |
| No responde | 61,445 | 19.6 | 60.5 | 39.5 |
| Total | 314,012 | 100.0 | | |

Fuente: ENIIA 2000

As far as the hours worked in each day:

- Among those that declared that they worked during the day (6:00AM-7:00PM): 31% worked less than 5 hours, 56% worked between 5 and 8 hours and 13% worked more than 8 hours.

- Among those that declared working during afternoon and/or night (1:00PM-12:00PM): 76% worked less than 5 hours, 21% worked between 5 and 8 hours, and 3% worked more than 8 hours.

- Among those that declared working during the night and/or dawn (8:00PM-6:00AM): 53% worked less than 5 hours, 27% worked between 5 and 8 hours, and 20% worked more than 8 hours.

- Among those that declared working during the dawn and/or morning (1:00AM-12:00M): 73% worked less than 5 hours, 22% worked between 5 and 8 hours, and 5% worked more than 8 hours.

It is important to note that 13% of children worked more than 8 hours a day, which not only prevents attendance at school but also the realization of childhood development.

**What types of work do they perform?**

Child laborers in Nicaragua were working in the following economic sectors:

| Rama de actividad económica | Cantidad | % | Hombre | Mujer |
|---|---|---|---|---|
| | | | Distribución porcentual | |
| Agricultura, silvicultura y pesca | 166,652 | 53.1 | 84.7 | 15.3 |
| Minas y canteras | 501 | 0.2 | 100 | — |
| Industria manufacturera | 33,543 | 10.7 | 62.7 | 37.3 |
| Electricidad, gas y agua | 450 | 0.1 | 100 | — |
| Construcción | 11,775 | 3.7 | 99.2 | 0.8 |
| Comercio, restaurantes y hoteles | 60,200 | 19.2 | 52.8 | 47.2 |
| Transporte, almacenamiento y comunicaciones | 4,959 | 1.6 | 98.4 | 1.6 |
| Establecimientos financieros y seguros | 845 | 0.3 | 100 | — |
| Servicios comunales, sociales y personales[5] | 35,087 | 11.1 | 34.5 | 65.5 |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |

Most of the children and adolescents of Nicaragua work in agriculture, forestry and fishing. This economic category represents most of the world's poor, who work long hours for miserable wages and in dangerous and difficult conditions. The work that children undertake is diverse, from the brief periods of light work after school, to long hours of arduous work. Often with chemical agents and dangerous processes, as much in subsistence activities as in the commercial production.

Taking into account the age classifications of the national legal norms that provide that the national minimum age for employment is 14 years, the data confirms the gravity of the problem. As seen below, the distribution by age is as follows:

| Actividad a la que se dedica la empresa donde trabaja o trabajó | Edades Clasificación Internacional | | | Clasificación de acuerdo a edad establecida para trabajar | | Total[6] |
|---|---|---|---|---|---|---|
| | 5-9 | 10-14 | 15-17 | 10 - 13 | 14 - 17 | |
| Agricultura, silvicultura y pesca | 16.8 | 45.2 | 40.0 | 34.0 | 49.2 | 166,652 |
| Minas y canteras | — | — | 100.0 | — | 100.0 | 501 |
| Industria manufacturera | 10.3 | 36.7 | 53.0 | 26.5 | 63.2 | 33,543 |
| Electricidad, gas y agua | — | 47.1 | 52.9 | 47.1 | 52.9 | 450 |
| Construccion | 4.2 | 18.5 | 77.3 | 10.7 | 85.0 | 11,775 |
| Comercio, restaurantes y hoteles | 13.5 | 47.0 | 39.5 | 35.7 | 50.8 | 60,200 |
| Transporte, almacenamiento y comunicaciones | 4.4 | 34.6 | 61.0 | 16.0 | 79.7 | 4,959 |
| Establecimientos financieros y seguros | — | 23.0 | 77.0 | 23.0 | 77.0 | 845 |
| Servicios comunales, sociales y personales | 5.52 | 30.61 | 63.87 | 20.05 | 74.43 | 35087 |

Mining

In the case mine work, although this sector employs only 0.2% of the child labor population, all boys, the work poses unimaginable dangers. The representatives of the Ministry of Labor verified the dangers of this activity in the municipality of El Viejo, Department of Chinandega, where the labor inspectors demonstrated that the children, along with their family, work long days. In addition to the dangers to their health, it interferes with their attendance at school.

Manufacturing

In the manufacturing industry, 62.7% of the child labor population are boys and the 37.3% are girls. Although it is an economic sector that does not reflect a great number of working children, they participate at the end of the supply chain, producing to a great extent for internal consumption and do informal work at home such as assembly of parts or finishing of products in a wide range of industries that include textiles, articles of clothing and footwear. Children also support their mothers who engage in home work.

Construction

Work in the construction, just as in mines and quarries, involves serious dangers to the health of the children. Often, the children of construction workers end up performing the work of the adults and, if the work is done in a geographic area where there are few schools, these children have irregular attendance.

Sales

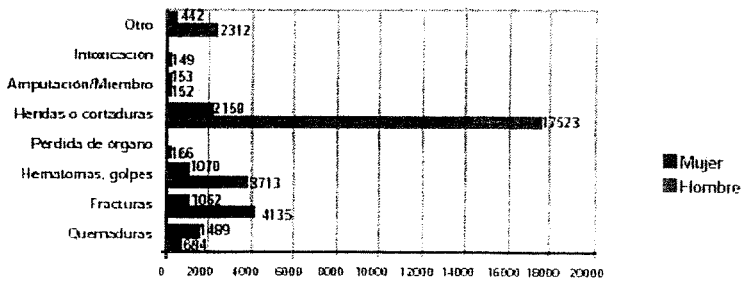
With regard to commerce, although there is slightly a greater percentage of men, it is also highly feminine: 52.8% men and 47.2% women. In this sector, the most visible population is the one in the street or the markets or other closed public spaces. They sell prepared foods, articles of consumption or, depending on the season (umbrella, accessories of vehicles, etc.). All these children face many dangers, for example, traffic, smoke, insecurity, sexual harassment and violence. A clear example in the country that occupied the pages of major newspapers was the group of traveling sales children in the city of Leon who were sexually abused by an ex-university professor.

Domestic Service

Another category important to analyze is the one related to communal, social and personal services. These are primarily undertaken by girls: 65,5% women and 34,5% masculine. Many of them dedicate themselves to domestic work in the house of a third party. Normally the national policies do not address children in this sector and consequently they are outside the national legislation. Child domestic service is a phenomenon that affects the poor countries as well as the rich ones, but more the poor ones. Many of these children are outside their homes, live in the places where they work, thus depriving them of affection, suitable nutrition, opportunities of study and formation in general

**Health and Safety of Child Workers - Injuries Suffered by Job**

The children interviewed identified 35,208 injuries as a result of their labor.



As far as the injuries, the greater incidents were: wounds and cuts, hematomas, blows and fractures. Nevertheless, there are other incidents that although were not reflected in great magnitude, are alarming: There are children and adolescents who have suffered loss of organs, amputation of limbs, poisoning and burns. The work establishments where these accidents happened, are related to: Agriculture, Forestry, Fishing, Mines & Quarries, Manufacturing, Sales, and transportation.

It is important to observe that 66.9% of the accidents happened in agriculture, forestry and fishing, followed by commerce and manufacturing, Although it is certain that most of the accidents were experienced by adolescents of 14 to 17 years, children of 5 to 9 years in agriculture, manufacturing, commerce and domestic services suffered a considerable number of accidents. It is also important to comment that the greater accidents were in the rural area (73.0%) and is there where greater affectation of the children between the 5 and 9 years is reflected.

**How much do they earn?**

It is important to note that only 33% of the child and adolescent workers reported income. Taking into account only the monthly entrance from the primary occupation plus the secondary occupations, the smallest income belongs to the children a in the rank of age of 5 to 9 years, where is observed that the 98,0% gain 600 or less (US 47.3); and those of greatest income are adolescents of 15 to 17 years, where 42.0% earn more than 600. In addition, those in the rank of 10 to 14 years also have low wages, with 85.4% earning 600 or less. According to geographic area, it is important to note that the lowest incomes are in the rural sector, where 74.2% receive a salary of C$600 or less and only 25.8% have an income of more than C$ 600.

Income by Activity:

| Ocupaciones | Rangos Ingresos (Distribución porcentual) | | | |
|---|---|---|---|---|
| | Hasta C$400 (US$31.5) | De C$401 a C$600 (US$31.5-47.3) | De C$601 a C$1000 (US$47.3-78.8) | Más de C$1,000 (US$78.8) |
| Agricultura, silvicultura y pesca | 39.9 | 38.7 | 15.7 | 5.7 |
| Minas y canteras | 29.7 | 44.9 | 0.0 | 25.4 |
| Industria manufacturera | 33.8 | 20.0 | 27.0 | 19.2 |
| Electricidad, gas y agua | 100.0 | —— | —— | —— |
| Construcción | 11.6 | 10.1 | 36.3 | 42.0 |
| Comercio, restaurantes y hoteles | 39.4 | 22.5 | 24.3 | 13.8 |
| Transporte, almacenamiento y comunicaciones | 24.2 | 5.4 | 15.9 | 54.5 |
| Establecimientos financieros y seguros | —— | —— | 100.0 | —— |
| Servicios comunales, sociales y personales | 57.6 | 22.2 | 12.7 | 7.5 |

**Why do they work?**

From different national and international studies that discuss the causes of the child labor, its it clear that this is a phenomenon that cannot be attributed to a single cause. Rather, diverse types of problems converge, including social, cultural and economic. In recent years, one of the most important causes

identified has been quality of education, including the lack of access to school and the lack of public policies directed to childhood and adolescence that have total coherence with the economic policies. The results of the investigation show that the main reasons for which they work are the following:

In order to complete the family income: 74.2% are men and 25.8% are girls.
In order to pay pending debts: 82.2% are men and 17.8% are girls.
In order to help with the family business: 73.9% are men and 26.1% are girls.
Education is non-accessible: 100% are men.
The training center is very remote: 74.3% are men and 25.7% are girls.

Relating the reasons for which they work by area of rfesidence, the report reflects the following:

53. 7% of those who work to pay pending debts live in the urban area.
95,4% of those who referred that they work because the training center is very remote live in rural 83,4% and those that don't have access to education live in the rural area.

It is evident that child labor is multicausal. Nevertheless, the greater reasons by those than work are related to the economic situation and the lack from access to the school. These data confirm what other investigations have reflected: many of the children and adolescents who for some reason are not integrated to educative programs, are working. To a certain extent, the work fills the emptiness of the school. This is a fundamental data for the formulation or adjustment of basic the social policies, mainly the ones relative to primary education. Indeed, of the total of children 5 to 17 years old (1,772,614), 25.8% is not integrated in any educative program (458,202), whereas 49.1% of the working children adolescents are not integrated. Of the total of children and adolescents nonintegrated, 132,191 children and adolescents work, which corresponds to 28.8% of the total.

**5. Elimination of Discrimination**

**5.1 National Laws and ILO International Conventions**

**Convention #100, Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.**

This Convention defines the term "remuneration" as the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or individually, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment; the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

Each Member must ensure the application of this Convention through national laws or regulations; legally established or recognized machinery for wage determination; collective agreements between employers and workers; or a combination of the various means.

**Convention #111, Concerning Discrimination in Respect of Employment and Education.**

This Convention defines the term "discrimination" as any distinction, exclusion or preference made on the basis or race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Article 82 subsection 1 of our Political Constitution establishes that "Workers have the right to working conditions that secure for them, in particular: Equal remuneration for equal work under identical conditions, appropriate to its social responsibilities, without discrimination based on political opinion, religion, race, sex or any other reason; and securing well-being fitting to human dignity."

In Nicaragua there is no gender discrimination regarding remuneration. For that reason, minimum wage rates do not establish any difference or inequality between remuneration for men's and women's work, for work of equal value. Likewise, professional training and placement programs help create opportunities for women.
The above is reinforced by two Constitutional guarantees:

Article 27 establishes that all persons are equal before the law and are entitled to equal protection. There shall be no discrimination based on birth, nationality, political opinion, race, sex, etc.

Article 48 establishes absolute equality between man and woman.

In Nicaragua, the opportunity to work is a function only of fulfillment of those qualifications required by the specific post.

Concerning Article 2 of the Convention, a group has been working since 1990 on a policy regarding occupations' structures and contents, attempting to reclassify occupations based on a classificatory methodology that distinguishes occupations by categories and comparative assessments, eliminating any discrimination. This demonstrates that national norms have been progressively harmonized with international norms on these matters.

Additionally, Article 74 of the Political Constitution established: "No one shall deny work to women based on pregnancy, nor shall they dismiss women during pregnancy or in the postnatal period, in accordance with the law."

### 5.2 Principal Changes in Labor Legislation over the Last Five Years

The Labor Code of 1997 introduced two new provisions:

a) Fundamental principle #XI established: "Woman and man are equal in their access to work and shall be treated equally, in accordance with what is established by the Republic's Constitution."
b) Article 138 of the Labor Code establishes: "The working woman shall enjoy all the rights guaranteed in this Code and all other laws concerning equality of conditions and opportunities. She shall not be subjected to discrimination for being a woman. Her wage shall be in agreement with her abilities and the occupation she fulfills."

### 5.3. Principal Obstacles to the Fulfillment of Labor Laws

The principal obstacle is the high unemployment rate, which permits the State and individuals to set very low wages that men reject. Women end up filling these positions. In this way we see that women fill positions in those sectors with the largest labor force and low wages, such as education, healthcare and EPZs. As heads of household, single mothers have to accept whatever employment is offered, even if the wage is very low.

Public and private sector employers utilize this form of discrimination, not by denying employment to women or paying more to men than to women, but by taking away from women their right to obtain work the remuneration for which allows them to do better than just subsist. With low wages established, the struggle to gain incentives only serves to increase exploitation of their labor.

Another form of discrimination has to do with pregnancy. Pregnant women are not given jobs, so that the company will not have to pay for prenatal and postnatal rest. There is also discrimination against adult women. A woman older than 25 confronts difficulties finding work, since so many thousands of women 14 to 24 years old are considered more attractive (youth, energy, beauty and lack of experience).

**5.4 Problems in Working Conditions Caused by Non-Compliance with the Law**

Discrimination based on age and pregnancy leads to very low income, unemployment, susceptibility to sexual assault, and working under dangerous conditions.

**5.5 Parallel Legislation that Influences Non-Compliance with the Law**

For EPZ workers, government attempts to solve the unemployment problem by keeping companies in and attracting more companies to EPZs lead to government tolerance of that sector of employers that systematically violates workers' labor rights.

For workers in healthcare and education, fiscal austerity policies – designed to guarantee a budgetary balance between revenues and expenditures in order to maintain macroeconomic equilibria – lead to salary freezes.

**5.6 Practical Cases**

**Case of Managua Municipal Markets Corporation (CONMEMA) v. Heidelberg del Rosario Velásquez Herrera, in her capacity as a worker**

II. As with the Managua departmental Labor Inspector for the Social Sector's resolution dictated at 11:25am on January 8, 2002, this Labor Inspector-General determines that the dismissal of Mrs. Heidelberg del Rosario Velásquez Herrera by the administration of the Managua Municipal Markets Corporation (CONMEMA) goes against Article 144 of the Labor Code. The worker Heidelberg del Rosario Velásquez Herrera was dismissed from work in an illegal and arbitrary manner, using Article 45 of the Labor Code, even though the employers knew that this worker was pregnant. Even though this violation took place, this authority cannot reinstall the worker Heidelberg del Rosario Velásquez Herrera in her work, because only the judicial labor authorities have the authority to resolve cases of rehiring. Thus there is nothing more for this Labor Inspector-General to do than to confirm the judgment made by the Ad-quo authority. **Therefore:** Based on these considerations, Article 144 of the Labor Code, Law 290 Article 304 of Decree #71-98, and all other capacities the Law confers upon me, the signing Labor Inspector-General RESOLVES: Against the appeal interposed by the attorney Barbaro Eloy Díaz López against the resolution dictated by the Managua departmental Labor Inspector for the Service Sector at 11:25am on January 8, 2002. Thus the appealed resolution IS CONFIRMED. The attorney Rosa Argentina Téllez, in her aforementioned capacity, is notified that Mrs. Heidelberg del Rosario Velásquez Herrera must remain in the same work with the same wages. The employer is notified that, in the case of non-compliance with this ruling, matters shall proceed in accordance with the law

## 6. Job Stability

### 6.1 National Laws and ILO International Conventions

Nicaragua has not ratified any international Conventions concerning job stability. However, the Political Constitution in effect since January 1987 establishes in Article 82 numeral 6 that workers have a right to working condition that ensure job stability, in accordance with the law.

This provision guarantees that the causes of dismissal from work cannot be established in internal disciplinary regulations but must be approved by the legislature. This because employers had continuously issued administrative decisions establishing causes for dismissal, attacking workers' judicial security and job stability.

### 6.2 Principal Changes in Labor Legislation over the Last Five Years

The 1997 Labor Code established two types of labor contracts, for an indefinite time-period and for a fixed time-period. However, for the latter type of contract a worker who continued working for thirty days more, or who continued after the end of the time-period established by the second extension, may keep working and be considered to have an indefinite time-period contract.

This provision's goal is to contribute to job stability and to eradicate such activities as the use of short-term contracts by unscrupulous employers to undermine job stability and avoid paying compensations for old age or wrongful dismissal.

Another contribution to stability comes from the norms contained in Article 45 of the Labor Code, which stipulates that when an employer dismisses a worker who has an indefinite-term contract without just cause, the employer shall pay the worker a compensation of no less than one and no more than five months' wages.
Article 46 of the Labor Code grants the right to return to work to workers whose dismissal violated provisions contained in the Labor Code or was of a retaliatory nature (for having exercised or attempted to exercise their labor and trade union rights). The worker can exercise this right by bringing a demand to a labor judge.

Article 48 of the Labor Code establishes four just causes for dismissal – in which cases the employer has no other responsibilities to the worker. These are: grave prohibited offenses; grave offenses against the life or physical integrity of the employer; slanderous or injurious statements that lead to loss of prestige for or economic damage to the business; and any other violation of contract that has caused grave harm to the company.

The closing section of Article 48 of the Labor Code establishes that, before dismissing a worker for just cause, the employer must seek authorization from the departmental Labor Inspector. This departmental Labor Inspector cannot reach a decision without hearing from the worker. Once the dismissal has been authorized, the case shall pass to the Labor Inspector-General if either party appeals.

### 6.3 Principal Obstacles to Fulfillment of Labor Laws

**Labor Contracts**

Two legal devices are used to make a mockery of the right to job stability:
1) Renting services: This civil law device, in which work is seen as merchandise and remuneration for it is seen as a renter's fee, was repealed when the old Law Code came into effect in 1945. So stipulated its Article 369, which in the relevant section states: "Upon coming into effect, this code repeals Book III, Title XIV, Chapters VIII, IX, XI and XII of the Civil Code." (All these chapters referred to rental contracts and the contracting of day-laborers and other workers, including the rental of non-material services. This left in tact only contracts for construction, to be signed between the interested party or owner of the work and the construction business owner.) The Labor Code is to regulate all forms related to workers.
Article 2 of the current Labor Code establishes that its provisions and those of labor legislation must be complied with by individuals and legally recognized entities established or to be established in Nicaragua. Only members of the Armed Forces are excluded from the Labor Code, and only regarding their unique functions.

However, many employers make use of the (non-existent) figure of renting services to avoid paying social security and other labor benefits, going openly against labor legislation's provisions and doing harm to workers' rights. Workers accept such contract work out of necessity, at times such as these when the unemployment rate hovers above 40% of the economically active population.

2) Continual contracting: Another way of evading responsibilities the Labor Code and other labor laws give to employers is through continual contracting. This consists in contracting workers for periods of no more than three months, with the goal of keeping the sword of Damocles dangling by a thread over workers' heads, so that they will not behave badly (which can be understood to mean "demanding their rights"). If a worker joins a trade union, signs a list of demands for collective bargaining, supports a general assembly of workers, or supports the declaration of a strike, his or her contract is not renewed.
These regularly renewed short-term contracts put workers' rights in checkmate. Due to collective fear that contracts will not be renewed, workers prefer losing their rights to losing their job. In this way the trade union loses the ability to negotiate and the power to convene. Trade union meetings and dues are reduced to a bare minimum.

Another form, sometimes used independently and sometimes combined with continual contracting, is that of the "benefits salary." This means including small sums designated for vacation days and the thirteenth month (Christmas bonus) in the salary, robbing vacation days and the thirteenth month of their purposes. The purpose of vacation days is weekly rest to restore energies spent in work, and the purpose of paying the thirteenth month is to allow the worker to take on all the expenses demanded by Christmas and the vacation around Christmas. Labor courts have judged this kind of "benefits salary" acceptable, doing damage to workers.

**6.4 Problems in Working Conditions Caused by Non-Compliance with the Law**

Non-compliance with laws regarding fixed-period contracts and idefinite-period contracts injures the right to job stability.

Many businesses are also using labor contracts in which they stipulate wages based on piecework, with very high standards that force workers to work extra hours to be able to achieve, at best, the minimum wage. This type of contracting makes a mockery of the fundamental right to an eight hour day. Neither constituents nor legislators have ever considered that right revocable. These practices affect the length of the working day and income.

Likewise, in order for the employer to avoid paying benefits, workers are dismissed on the pretext of just cause, without prior authorization from the departmental Labor Inspector. The departmental Labor Inspector is responsible for determining whether the employer's assertions that there was just cause to dismiss the worker are true.

Most workers, lacking knowledge of their labor rights, do not go to the Labor Inspector to denounce this anomaly and seek repeal of the dismissal. Only those who seek to be reinstated and go to the Labor Inspector for that reason then realize that the employer failed to comply with a legal requirement and that the failure to comply – to get authorization from the departmental Labor Inspector – invalidates their dismissal.

### 6.5 Parallel Legislation that Influences Non-Compliance with the Law

As has already been mentioned, though no law authorizes these violations, foreign business in EPZs, public sector contractors, and natural resource-exploitation contractors base their actions on the investment contracts they have signed with the government. The contracts contain no mention of labor-related obligations; and they state that the only jurisdiction capable of summoning the companies is that of the Arbitration courts.

## 7. Decent Working Conditions: Salaries, Working Hours, Health Conditions, Security, Maternity Leave and Healthcare

### 7.1 National Laws and ILO International Conventions

Obligations derived from the most recent Conventions concerning salaries, working hours, health conditions, security, maternity leave and healthcare have been incorporated into the Political Constitution and laws.
Article 82 of the Political Constitution guarantees:

1. Equal remuneration for equal work under identical conditions.
2. Working conditions that ensure physical integrity, health, hygiene and the diminution of professional risks.
3. An eight-hour workday, weekly rest, vacations, remuneration for holidays.

### 7.2 Principal Changes in Labor Legislation over the Last Five Years

When the Labor Code went into effect in 1997, the following fundamental principles were established:

- The irrenunciability of rights.
- Restriction of the civil law principle of the autonomy of the will.
- The principle of *in dubio pro operario*.
- The filling of legal loopholes, prioritizing the general principles of the right to work, labor jurisprudence, comparative labor law, and, in the last place, common law.

Two types of labor contracts have been established, one for an indefinite time-period and one for a fixed time-period. However, for the latter type of contract a worker who continued working for thirty days more, or who continued after the end of the time-period established by the second extension, may keep working and be considered to have an indefinite time-period contract.

### 7.3 Principal Obstacles to the Fulfillment of Labor Laws

#### 1. Overtime Pay, the Seventh Day, Holidays, Vacations and the Thirteenth Month

**Legal Basis**

Article 84: "the ordinary salary is that which is earned during normal working hours, and which includes the basic wage, incentives and commissions."

In practice the administrative and judicial authorities interpret restrictively the reach of the term "incentive." This despite the general legal principle that where the law does not make a distinction, no one may do so. In the above definition the term is used in a general way and distinctions are not made between various kinds of incentives. The authorities interpret as incentives only those incentives linked to productivity, without any law or regulation that makes that distinction. This openly goes against fundamental principle VII *In dubio pro operario*, which establishes that in case of conflict or doubt concerning the application or interpretation of conventional or regulatory legal standards, the provision most favorable to the worker shall prevail.

By reducing the reach of "incentives" through this restrictive and illegal interpretation, they limit the total amount of the ordinary salary, which is the basis for calculation of all benefits:

- Vacations: Article 78: Vacations will be paid, with calculations based on the most recent ordinary salary earned by the worker.
- Thirteenth Month: Article 93: By additional salary or thirteenth month is understood the remuneration in money received by the worker, based on the ordinary salary established by this code.
- Overtime, seventh days: Article 62: Overtime hours and those worked on a day of rest (or any other day requiring special compensation) shall be paid at a rate of 100% more than what is stipulated for a normal workday.

In all these cases, a percentage of the benefits that should belong to the worker is stripped away. Reduction of the ordinary salary, through restricted interpretations made by the authorities charged with applying the Law, limit the total amount of the worker's benefits. This because the calculations are based upon the ordinary salary. In such cases the worker has no recourse, because the administrative and judicial authorities have adopted the same interpretation.

This restrictive interpretation also aims to allow employers to pay a smaller employer contribution into social security. The lower the worker's salary, the lower will be the employer's contribution to social security.

Likewise, reductions in total payroll allow the employer to pay less to INATEC. 2% of payroll must be paid to INATEC for technical training of workers.

**2. The Specific Case of Overtime**

Beyond the quantity of overtime hours paid, there are other problems related to this benefit (overtime payment).

Legal basis:

Article 57: Work carried out outside normal working hours constitutes overtime.
Article 58: The number of overtime hours shall not be greater than three per day and nine per week.
The following problems exist:

a) Employers demand more hours of work than the maximum established in the abovementioned Article 58 of the Labor Code.
b) Once extra hours have been worked, whether within or beyond the legal maximum established in Article 58 of the Labor Code, they are not paid.

In the first case, the worker cannot refuse to work extra hours, even if they are more than what the Labor Code permits, because if they were to do so they could be dismissed from work.

In the second case, if overtime hours are not paid, the workers do not demand payment for as long as they keep the job, because they could be dismissed from work if they did so. They have to wait until they no longer have the job to make demands for overtime hours that were never paid and for seventh days and holidays that they worked but were never paid. When they make these demands, they realize there are two limitations:

a) Expiration: Article 257 of the Labor Code establishes that lawsuits derived from the Code, from collective agreements and from individual labor contracts expire after one year. Although this article does not specify the starting date for this one year expiration period, the administrative and judicial authorities have interpreted that the period begins the moment the worker should have been paid. Once again, the Law does not make a distinction, but the authorities restrictively interpret, going against the interests of workers and openly contravening the principle of *in dubio pro operario*. The reality is that if a worker demands payment of his or her benefits while still in a job, he or she is exposed to dismissal. Therefore, a sound interpretation based on the principle of *in dubio pro operario* would be to decide that the one year expiration period begins to be counted on the day the job ends.

b) Requirements of the Lawsuit: Article 307 of the Labor Code establishes in subsection e) that as a requirement for a lawsuit to be brought, its object – that is, what it seeks or demands – must

> be determined with the greatest possible precision, with as much precision as the worker bringing the suit can achieve. This does not mean that, if he or she has forgotten to include mention of some extra hours or seventh days worked, then he or she will not be compensated for those days. The principle that unsolicited benefits can be recognized and granted applies to labor cases. However, the courts' jurisprudence has gone beyond the law, demanding that workers record in the suit, one by one, all the extra hours they worked. The courts argue that lack of precise details on the number of extra hours being sued for renders the employer being sued defenseless – which is untrue, since the employer has in his or her possession the registers, attendance lists, or timecards with which he or she could contradict the worker's claims.

This interpretation, which goes beyond the law and against workers, has no legal justification. Article 334 of the Labor Code establishes that when a worker seeks to introduce as proof a written labor contract, register, salary ledger, accounting book, or other supporting document related to the trial, the employer is legally obligated, under threat from the labor authorities, to produce the document for the court.
Therefore if by reviewing the registers or timecards it can be determined how many extra hours the worker worked, it does not matter whether the worker requested payment for fewer or more. The judge or court shall grant compensation for the number of extra hours actually worked. As in any legal process, a person can ask for one thing or another, but the judge will only grant what there is evidence to warrant.
The worker carries no exhaustive, detailed register of extra hours worked. In most cases, the worker cannot accurately calculate the quantity to be sued for.

Another problem is the application of Article 309 of the Labor Code, which stipulates that if a suit does not contain all the requirements enumerated in Article 307 the judge must order the plaintiff to put right all omissions (in this case, the specific days and hours of extra work done by the plaintiff). Article 310 stipulates that the suit must be presented in the proper form before the labor authorities within 24 hours to be accepted. Thus if days and hours are not specified, the lawsuit will not even be accepted.

### 3. Health Conditions, Security, Healthcare and Maternity Leave

On matters of health we can say that, as with all the other workers' rights, the law guarantees the right to healthcare; but in practice, workers encounter serious obstacles to their health. Privatization of care has led to a substantial deterioration of healthcare services. Workers find no answer to their health problems.
As for means of protecting working conditions, we find that our Ministry of Labor inspectors act more in response to petitions than they act on their own, which limits their ability to monitor respect for these rights.

**Constitutional Regulations Containing these Rights:**

**Article 59.** Nicaraguans have the right, all equally, to health. The State will establish the basic conditions for its promotion, protection, recuperation and rehabilitation.

**Article 61.** The State guarantees Nicaraguans' right to social security, for their comprehensive protection from the social contingencies of life and work, in the form and under the conditions determined by law.

**Article 77.** The elderly have the right to protective measures from their family, society and the State.

**Article 82.** Workers have the right to working conditions that ensure for them, in particular:

> 4. Working conditions that guarantee physical integrity, health, hygiene and the diminution of professional risks, constituting occupational safety for the worker.
>
> 7. Social security, for comprehensive protection and means of subsistence in case of disability, old age, professional risks, illness or maternity; and for family in case of death; in the form and under the conditions determined by law.

The Labor Code establishes all employers' obligation to adopt necessary, suitable preventive means to effectively protect the lives and health of their workers, arranging the physical installations and equipment necessary to reduce and eliminate professional risks in the workplace. (Article 100 of the Labor Code)
Insured workers receive medical attention in the so-called provisional medical businesses, subcontractors of the Nicaraguan Institute for Social Security – as part of the privatization of medical services this Institute is supposed to offer.

Before 1990, the Nicaraguan Institute for Social Security was responsible for handling all pathologies. Today the provisional medical businesses do not cover chronic illnesses, degenerative illnesses, or high-cost illnesses – thereby doing harm to workers. However, some labor contracts require constant medical examinations, due to the unhealthy or dangerous nature of the work:

- Land transportation workers (Article 183 of the Labor Code)
- Mining company workers (Article 188 of the Labor Code)
- Seagoing workers (Article 161 of the Labor Code)
- Pregnant women workers (Article 140 of the Labor Code)

Pregnant women workers have the right to rest for four weeks prior to childbirth and eight weeks afterwards (or ten weeks afterwards if there are multiple childbirths), receiving her most recent or best salary, without these payments taking anything away from the healthcare she is to be administered by the social institutions charged with protecting mothers. (Article 141 of the Labor Code)
The Political Constitution establishes in Article 23 that the right to life is inviolable and inherent in the human being. Article 59 establishes all Nicaraguans' right to health. Article 82 numeral 4 establishes workers' right to working conditions that guarantee physical integrity, health, hygiene, and diminution of professional risks, constituting occupational safety for the worker.

Despite the Constitutional guarantees cited, the International Conventions, and the Code's provisions concerning hygiene and occupational safety, this right, like the other labor rights, faces obstacles to fulfillment for lack of inspectors to monitor its fulfillment by employers. Employers' non-compliance systematically and continuously puts workers' health at risk and, in the long term and on occasion, puts workers' lives themselves at risk.

This exposure reduces the higher values of life and health, legally protected by the Political Constitution, to mere speech without content – for lack of a policy of inspection, inspectors, dissuasive sanctions, and corrective sanctions. The only existing sanction is a fine, the maximum quantity of which is set at 10,000 cordobas (equivalent to US$666.00) – a very small amount that does not correspond in its scale with the scale of the right infringed upon.

When a worker interposes a denunciation for violations of regulations concerning hygiene or occupational safety by his or her employer, he or she meets an Inspector who is complacent and understanding about the employer's infractions and willing to forgive non-compliance, accepting the employer's justifications.

**7.4 Parallel Legislation that Influences Non-Compliance with the Law**

Decrees, laws and agreements are signed and approved to give incentives for investment in EPZs, highways, or the tourist sector; and contracts for public services or natural resource-exploitation are awarded – in all these legal texts and contracts, they forget to include provisions or clauses that guarantee respect for and fulfillment of labor laws.

In multiple ways, this kind of economic legislation is given privilege. Nevertheless, there is a hope that the World Trade Organization's resolutions or the texts of bilateral or regional free trade agreements could establish a commitment, by these investors, to respect labor laws.

**7.5 Problems in Working Conditions Caused by Non-Compliance with the Law**

The systematic violation of the principal benefits to which a worker is entitled noticeably reduces that worker's real income and leads him or her to work more overtime than is permitted by law. Workers are not guaranteed a healthy working environment nor the healing of illnesses they might contract. Workers are made to sign illegal contracts such as those of rented services and continual contracting. In 2002, the NGO, Women's', Workers and Unemployed Movement, Maria Elena Cuadra, undertook an exhaustive survey of the incidence of violations of decent work in the maquila sector of Nicaragua, published under the name "Avance y Retrocesos, Mujeres en las Maquilas de Nicaragua." A summary of their findings are set forth below. The researchers interviewed 4,770 workers in 17 companies (Chih Hsing, Chao Hsing, Presitex, Nien Hsing, Chentex, China United, Gatornica, Rocedes, Mil Colores, Ronaco, KB Manufacturing, Hansae, Yu Yin, Roo Hsing, Metro Garments, Singbo Garments, and Insudtria Santamaria) in 6 free trade zones.

| Percentage | Type of Conflict | Legal Norm |
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| **Labor Contracts** | | |
| 63.82 | 3,044 signed contracts of employment with the company but were not provided with their own copy | Art. 23. The labor contract will be made in two copies signed by both parties, giving one of those to the worker. Said copies can be presented to the Labor Minister for certification. |
| 5.83 | 278 affirmed that they had not signed any contract with the company where they work | Art. 19. The labor relation, whatever its origin, is the offer |

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| | | of work by a natural person to an employer for the payment of a remuneration. An individual contract of employment is verbal or written between the employer and the worker, which establishes between them a labor relation to complete a job or to provide personal services.<br><br>Art. 23. The labor contract will be made in two copies signed by both parties, giving one of those to the worker. Said copies can be presented to the Labor Minister for certification. |
| 32.52 | 1,561 affirmed that in the company where they work they have had to undertake work not contemplated in their work contract | Art. 20. A written contract must contain: a) a description of the work and the place where the work is to be done.<br><br>Art. 21. If the conditions of a contract of work are not met once ratified but before the provision of services, one will be able to go to the work courts so that they can determine the existence and quantity of the |
| **Internal Regulations and Collective Agreements** | | damages. |
| 12.73 | 607 responded that there are plant rules, but they don't know them | Art. 255.- The internal procedures will be elaborated by the employer and will have to fulfill the following requirements:<br>a) be previously approved by the Departmental Inspectorate of Labor, which will have to listen to the workers;<br><br>b) be made available to the workers fifteen days before the date in which it will take;<br><br>c) Be in a easily legible form and placed on bulletin boards for the |

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| | | workers and other visible places in the workplace. |
| 1.97 | 94 said that there were no plant rules where they | See preceding frame |
| 42.29 | 2,017 responded that there is a collective agreement but that they do not know what it says | Art. 235. A collective agreement is the agreement reached in writing between an employer, or group of employers and one or several organizations of workers with legal personality. The objectives of the collective agreement are, among others, to establish general conditions of work, to develop the right of the participation of the workers in the management of the company and to have the improvement and the fulfillment the rights and reciprocal obligations.<br><br>The collective agreement will produce legal effects from the moment of its signature and it will be produced in triplicate, one to each party and another to the Ministry of Labor for his custody.<br>The Ministry of Labor will ensure that the collective agreements in no case restrict the established minimum guarantees in this Code.<br>Art 239.-The collective agreement will contain the identification of the parties, the companies or establishments and the categories of workers, the rights and obligations of the parties and the duration of the collective agreement, that will not be able to exceed two years. |
| 11.84 | 565 affirmed that there is no agreement in the company where they work | See above |
| **Health and Safety Conditions** | | |
| 14.13% | 674 affirmed that the sanitary conditions in the bathrooms were poor | Art. 100: Every employer has the duty to adopt preventative |

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| | | measures necessary and adequate to effectively protect the life and health of its workers, to equip the physical installations and providing the work equipment necessary to reduce and eliminate risks in the place of work, without prejudice to the norms establish the executive power of the Ministry of Labor.<br><br>Art. 101: Employers must adopt the following minimum measures:<br>a) The hygienic measures set forth by the competent authorities |
| 48.74% | 2,132 affirmed that the sanitary conditions of the bathrooms were average | Art. 130: Every employer has the duty to adopt preventative measures necessary and adequate to effectively protect the life and health of its workers, to equip the physical installations and providing the work equipment necessary to reduce and eliminate risks in the place of work, without prejudice to the norms establish the executive power of the Ministry of Labor.<br><br>Art. 101: Employers must adopt the following minimum measures:<br>a) The hygienic measures set forth by the competent authorities |
| 9.39% | 448 affirmed that they do not have the right to freely use the health services | Art. 130: Every employer has the duty to adopt preventative measures necessary and adequate to effectively protect the life and health of its workers, to equip the physical installations and providing the work equipment necessary to reduce and eliminate risks in the place of work, without prejudice to the norms establish the executive power of the Ministry of Labor. |

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| | | Art. 17: In addition to the obligations contained in other articles of this code, the employers are obligated to: c) ensure the workers due consideration and respect and to abstain from mistreatment of word, deed or omission and any act that could affect his dignity and decorum |
| 18.81% | 897 affirmed that there exist restrictions to use health services | See above |
| .86% | 41 responded that there are some time restrictions on using the bathroom | See above |
| 43.71% | 2,085 affirmed that in the company where they work, they are given set minutes to use the bathroom | See above |
| **Medical Permission** | | |
| 63.08% | 3,009 affirmed that their pay is reduced or lost when they ask permission to go to the doctor for illness or medical appointment | Article 74.- The employer will grant to the workers permission or license in following cases:<br><br>a)To go to personal medical consultation;<br>b) To get medical consultation for the disease minor children disabled of any age, when it is not possible to make it during non work hours<br><br>c) For a period of not more than six work days for serious disease for a member of the nuclear family that lives under their same roof, if the disease requires ones indispensable presence;<br><br>In the cases of a) and b) the worker enjoys one hundred percent of his wage; in the case of c), the wage will be decided between employer and worker, without the wage being less than fifty percent of their ordinary wage. |

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| | | In all the cases the worker will present medical certification. |
| 55.12% | 1721 affirmed that their pay is reduced or lost when they take their children to the doctor | See preceding frame |
| 24.25% | 757 affirmed that in the companies where they work, they are not given permission when their children are sick | See preceding frame |
| **Maternity Rights** | | |
| 2.41% | 84 affirmed that when they had looked for work in other companies in the free trade zone, they had been rejected for being pregnant | Article 138.-The female worker will enjoy all the rights guaranteed in this code and other laws on the matter in equality of conditions and opportunities and cannot be object of discrimination by reason of their condition as a woman. Their wage will be according to their abilities and |
| 61.46% | 397 affirmed that when they had become pregnant while working in their company, their supervisors did not assign them work in accordance with their state of pregnancy | Article 140.-It shall be the obligation of employers to allow to the continuation of work of women in state of pregnancy in work or tasks detrimental to her health. In this case, the employer will have to facilitate work that does not alter the normality of this biological process, without reduction of the ordinary wage received before pregnancy. Once concluded, the employer will be forced to transfer to the worker to its previous position with the effective wage. |
| 33.28% | 215 affirmed that when they returned from maternity leave, they were not returned to the same job they had | See preceding frame |
| 36.69% | 237 affirmed that when they were pregnant, they were assigned to work during the night shift | Art. 52<br><br>Pregnant workers, after six months of pregnancy, can not by included in the crews for night work. |
| **Other Social Benefits** | | |
| 37.88% | 1807 affirm that they are not paid any | Collective Agreement |
| 28.01% | 1336 affirm that they the company does not provide dinner when they work overtime hours at night | Collective Agreement |

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| 12.79% | 610 responded that they are occasionally provided dinner | Collective Agreement |
| 31.03% | 108 affirmed that when a family member died, they were not given a day of mourning | Art. 73: Workers have the rights to leave with pay in the following cases: a) For death of father, mother, children, spouse, common-law companion up to three consecutive days |
| 56.08% | 2675 affirmed that | Art 17:<br><br>In addition to the obligations contained in the other articles of this Code, employers are obligated to:<br><br>k) respect the work day, allow established periods of rest and put the work schedule in a visible place in the workplace |
| 59.08% | 2818 affirmed that the company does not pay production incentives. | Art. 84: The normal salary is that which is earned during the normal shift, which is understood as basic salary, incentives and commissions. |
| **Occupational Health and Safety** | | |
| 45.05% | 2149 affirmed that they did not have ventilators in their workplace | Art. 100: Every employer has the duty to adopt preventative measures necessary and adequate to effectively protect the life and health of its workers, to equip the physical installations and providing the work equipment necessary to reduce and eliminate risks in the place of work, without prejudice to the norms establish the executive power of the Ministry |
| 17.76% | 847 affirmed that the companies in which they worked did not have extractor fans | See preceding frame |
| 54.95% | 2,621 affirmed that they had suffered illnesses, injuries or other health problems caused by work | Article 101<br><br>Employers must adopt the following minimum measures:<br><br>a) The hygienic measures |

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| | | established by the competent authorities<br><br>b) Measures indispensable to avoid accidents in the control of machines or work materials and maintain a adequate supply of medication for the immediate attention of the accidents that do occur.<br><br>Art. 109<br><br>Professional risks are those that are understood as accidents and diseases that workers are exposed to at work.<br><br>Art. 17<br><br>h) not to discount to the worker the wage corresponding to the time that is unable to work because of the employer |
| 4.84% | 231 affirmed that in the companies where they worked there were no fire extinguishers in the workplace | Art 101<br><br>Employers must adopt the following minimum measures:<br><br>b) Measures indispensable to avoid accidents in the control of machines or work materials and maintain a adequate supply of medication for the immediate attention of the accidents that do occur. |
| 24.57% | 1,172 affirmed that they had suffered a work related accident during the time they had worked with the current company | Art. 100: Every employer has the duty to adopt preventative measures necessary and adequate to effectively protect the life and health of its workers, to equip the physical installations and providing the work equipment necessary to reduce and eliminate risks in the place of work, without prejudice |

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| | | to the norms establish the executive power of the Ministry of Labor. |
| 37% | 1,765 affirmed that they had not been given the protective gear necessary to carry out their work. | See preceding frame |
| **Labor Violence** | | |
| 5.87% | 280 affirmed that in the company where they work, they have personally suffered physical violence by their immediate supervisors | Art. 17: In addition to the obligations contained in other articles of this code, the employers are obligated to: c) ensure the workers due consideration and respect and to abstain from mistreatment of word, deed or omission and any act that could affect his dignity |
| 13.08% | 624 affirmed that they have seen other workers suffer physical violence by their direct supervisors | See preceding frame |
| 11.47% | 547 affirmed that they had personally suffered sexual harassment/assault | Art. 17: In addition to the obligations contained in other articles of this code, the employers are obligated to: c) ensure the workers due consideration and respect and to abstain from mistreatment of word, deed or omission and any act that could affect his dignity and decorum; p) ensure that the workers moral rights are not violated nor are objects of sexual assault or harassment. |
| 15.64% | 746 affirmed that in the companies where they work there are cases of sexual harrassment/assault | See preceding frame |
| 48.78% | 2,327 affirmed that they have personally suffered verbal violence/psychological pressure | Art. 17: In addition to the obligations contained in other articles of this code, the employers are obligated to: c) ensure the workers due consideration and respect and to abstain from mistreatment of word, deed or omission and any act that could affect his dignity |
| 56.29% | 2685 affirmed that they have seen others suffer verbal violence/psychological pressure | See preceding frame |

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| **Salaries** | | |
| .46% | 22 affirmed that they received a net monthly salary of $500 (the minimum in this sector is $895) | Art. 82: The salary is set freely by the parties, but can never be less than the legal minimum |
| 21.28 | 1,015 that when they disagree with the employer about their pay they do not have access to the records | Art. 91: The worker has the right to review documents related to the payment of his wages |
| 7.34% | 350 affirmed that when they don't meet the daily quota, the company pays less than the minimum. | Art. 85: All workers have the right to the minimum wage. The minimum wage is the lowest that can be paid to the worker for the services offered in an ordinary day of work, in a manner that satisfies the basic necessities of a head of a family.<br><br>The minimum wage will be fixed by the National Minimum Wage Commission in conformance with the law. |
| 69.01% | 3292 affirmed that they don't receive salary outside of the base pay (production incentives, e.g.) | Art. 84: The normal salary is that which is earned during the normal shift, which is understood as basic salary, incentives and commissions. Extraordinary wages is that which is earned in overtime hours. |
| **Overtime** | | |
| 26.06% | 1243 responded that they worked by production and that they didn't leave work at a normal hour because their shift ended when they completed their production quota | Art. 51: The ordinary day shift should not be more than 8 hours a day nor exceed a total of 48 hours a week. The ordinary night shift should not be more than 7 hours nor exceed a total of 42 hours a week. The ordinary split shift should not be more than 7 hours a day nor exceed a total of 45 hours a week. The day shift is that which is done during the natural day, meaning between 6 in the morning 8 pm of the same day. A night shift is that which is done between 8 in the night and 6am of the following day. |

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| 31.09% | 1,483 affirmed that in their companies, overtime hours are required | Art. 59: Workers are not obligated to undertake overtime work, except in cases of social interest or force majeur:<br><br>a) To prevent or eliminate without delay catastrophic consequences or accidents that can harm the production of services.<br><br>b) To undertake urgent labor to repair machinery, equipment or inmuebles, when the poor state of same puts in danger the health or life of the workers or population;<br><br>c) To undertake urgent work to reestablish public services or fix the consequences of disasters that affect said services; and<br><br>d) to undertake work of limited or temporary duration when it would be impossible to increase the number of workers for technical or weather related reasons or for escasez of the work force. |
| 7.71% | 368 affirmed that overtime hours are requested in a cordial manner but they are in fact mandatory | See Preceding frame |
| 22.6% | 901 affirmed that they worked 11 to 15 hours extra a week | Art 58: The number of overtime hours can not exceed 3 hours a day nor nine hours a week, with the exceptions set forth in the following article. |
| 19.66% | 784 affirmed that they worked between 16 and 20 hours extra a week | See preceding frame |
| 3.46% | 138 affirmed that they worked between 21 and 25 hours extra a week | See preceding frame |
| 3.91% | 156 affirmed that they worked more than 25 extra hours a week | See preceding frame |
| 33.94% | 1619 affirmed that the company in which they work paid their overtime hours at straight time | Art. 62: The overtime hours and those that the worker undertakes on his day of rest for |

| | | |
|---|---|---|
| | | whatever reason, must be paid 100% more than that which is set for the normal work day. |
| .36% | 17 affirmed that they were not paid the overtime hours they undertook | Art. 57: Work undertaken outside the ordinary work day are overtime hours, but not if the work is undertaken to correct the error of the worker. |

## III. CONCLUSIONS AND RECOMMENDATIONS

### 1. Conclusions

The massive violation of workers' individual and collective labor rights is due to a lack of political will on the government's part to comply with labor laws. This is because the labor laws as written gives priority to the rights of the worker, while the current government responds to the interests of the business sector. As a result, insufficient budgetary resources are given to the Ministry of Labor. The Ministry of Labor's few inspectors lack solid training in labor law. In the culture of corruption in which they have developed, it is more attractive for them to give merit to the employer's case than it is to decide for the worker. It is easier to ask for a bribe than it is to study a case. It is easier to destroy a trade union than it is to help train it.
In addition, the new Labor Code of 1997 lists fines as the only possible penalty, and with a limit of 10,000 córdobas. There are no other penalties established in the Code – neither takeover nor closure of an infringing company is contemplated. Similarly, there is no provision in the new Code penalizing with arrest an employer's refusal to reinstate a worker when the courts have made a final decision in favor of the statement. Finally, there are numerous loopholes in the legislation, above all in the regulatory norms that implement the Labor Code. Of course, employers' lawyers take advantage of these loopholes.

The same problem of insufficient knowledge of labor law is found in the Labor Courts, where judges trained in civil law impart labor justice based on jurisprudential developments that are now reforming the Labor Code by this means. This does harm to workers' rights and it demands much more from workers than what is established in the Labor Code. On the other hand, the majority of trade union leaders have this same illiteracy in labor law, not to mention the great mass of workers, who ignore their rights and the procedural rules through which they could put those rights into effect.

Workers' education to train workers in defending their rights, is in its infancy. This work is just beginning to be carried out by trade union centrals, women's organizations, human rights groups, and some university law faculties. Labor Inspectors are, among their functions, supposed to educate workers. But they do not do so.
Finally let us summarize these conclusions, noting the following causes for non-compliance with the laws:

- The government's lack of political will to see the law fulfilled;
- The government's favoritism to employers;
- Ignorance of labor law among administrative authorities, judicial authorities, trade union leaders, and workers;
- Corruption of the administrative authorities;
- Loopholes in legislation and in regulatory rules;

- Passivity and acceptance by workers who need to find or maintain employment.

**2. Recommendations for a Better and More Agile Application and Supervision of Workers' Labor Rights**

- A light, agile, dynamic Ministry of Labor is needed, able to adapt itself to varied requirements to fulfill its mission effectively.
- A new law governing careers in the judiciary is needed, allowing for lasting Labor Judges and Magistrates, hence independent ones well trained in labor law.
- A new Civil Service and Administrative Careers Law is needed, guaranteeing greater job stability among functionaries and Inspectors. This would need to be accompanied by adequate remuneration, to encourage them to remain in the post and to receive training in labor law.
- In its budget, the government of the Republic must prioritize the Ministry of Labor, providing salary policies and promotion policies that encourage public servants to remain in their posts. Also, they must be provided with the basic means necessary for them to carry out their work effectively. Ideally, this would mean a new law for labor-focused careers.
- There needs to be an Executive Decree looking at Ministry of Labor functionaries' responsibilities for failure to fulfill the Constitution and laws in their decisions and in their slowing of justice. Article 13 Law 290 and 2103 Pr. Article 46 of the Labor Code: 10% of the functionary's salary.
- The slowing of justice needs to be combated, as it has become an endemic problem harming workers.
- An effective legal protection order concerning the application of labor rights is needed.
- By way of an Executive Decree, an administrative proceeding needs to be created for authorization of the dismissal of a worker covered by a trade union's charter. Guarantees for due process through administrative channels, currently unprovoked, need to be established.
- Ministry of Labor authorities must be more cautious in authorizing dismissal of trade union leaders. They must verify whether the employer is hiding the dismissal and investigate whether the true cause of the dismissal is retaliation for the trade union leader having demanded labor rights or having engaged in particular trade union activities – such as joining federations, exercising the right to collective bargaining, or exercising the right to strike. All of these constitute workers' legal rights.
- By way of an Executive Decree, an administrative proceeding needs to be created for the Inspector's authorization of a labor contract's termination for just cause. Guarantees must be established for due process through administrative channels.
- By way of an Executive Decree, an administrative proceeding for collective bargaining needs to be established, based on what Article 238 of the Labor Code establishes.
- Administrative silence on these matters must be transformed from negative to positive.
- Oral justice must be promoted, as much in the administrative as in the judicial authorities. This would contribute to combating the slowing of justice. To promote oral justice, legislative reforms are not required – our labor legislation already provides for oral justice, as is stipulated in Labor Code Articles 266 subsection b) and 307.
- The Ministry of Labor must direct its efforts toward the inspection of working conditions, with the goal of ensuring effective monitoring of the exercise of fundamental labor rights by those who hold them.

- A plan for inspections must be designed, directed toward ensuring correct application of labor laws. Inspectors must furthermore investigate obstacles and limitations to the exercise or legal protection of a right.
- A plan for training must be designed for Ministry of Labor functionaries, Labor Judges, Labor Magistrates, employers and workers with the goal that all these parties understand the correct application and interpretation of labor laws.

This training plan must contain, among others, the following topics:

- Nomenclature of the fundamental rights.
- International Conventions that contain these rights.
- Their location in the national judicial framework.
- The content and reach of these rights.
- Their correct interpretation.
- Their correct application.
- What behaviors constitute violations of these rights.
- What the legal protection of these rights consists of.
- What the guarantee of a trade union's charter consists of.
- What behaviors constitute violations of a trade union's charter.
- Limits of the administrative and judicial authorities' powers concerning labor rights.
- Mechanisms for control of the correct application of these rights.
- Administrative and judicial proceedings for their application.
- Resources that the parties can use against the public authorities for failure to legally protect these rights (complaints before the President of the Republic, the Ministry of Labor, or the Committee for Trade Union Freedom of the ILO; denunciations before the Procurator for Defense of Human Rights; recourse to appeal; proceedings to make use of these resources).
- Responsibilities of the functionaries and judges for failure to legally protect these rights.
- Applicable sanctions against public servants and judges for failure to legally project these
- Content and reach of the Rule of Law.
- The incorporation of labor rights within Human Rights, their dimensions.
- Also the content and reach of the following legal provisions in particular:
  Article 238 of the Labor Code, which contains the proceedings for collective bargaining and in which the institution of the right to work is found; Article 231 of the Labor Code, which explains the reach of the trade union charter as a guarantee.
- Establish causes for the loss of a trade union charter. Propose those established in the Dominican Republic's Code, Article 394.
- Article 13 of Law 290, which contains the Ministry of Labor's obligation to fulfill the Constitution and laws and see that its functionaries fulfill them. This provision equips any party to complain before the Ministry of Labor for any grievance caused by a functionary in the exercise of his or her duties that harms the person or his or her organization.
- Article 150 subsection 1, which contains the President's obligation to fulfill the Constitution and laws and to see that his Ministries and functionaries fulfill them.
- Article 232 of the Labor Code. The Labor Inspector has a legal obligation to, upon proving violation of a trade union's charter, declare the violating act null, so that the worker may be reinstated by administrative means.

- What is meant by the nullity of an act.
- The obligation to impose a fine, based on what is stipulated in Article 22 of the Inspectors' Regulations, if someone responsible for a violation does not restore the violated right to the aggrieved.
- Explain the content and procedures to be observed in the new administrative proceedings to authorize dismissal of a worker covered by the trade union's charter.
- Explain the content and procedures to be observed in the new administrative proceedings to authorize dismissal of a worker for just cause, declared by the employer.
- Explain the content and procedures to be observed in the new administrative proceedings concerning denouncement of violations of a trade union's charter, declared by workers covered by the trade union's charter.
- Explain the administrative sanctions to which functionaries are exposed for failure to fulfill their legal obligations.
- The role of a public servant.
- Access to justice.

One of the principal fruits of this training would be agreement on the content, interpretation and application of labor laws, bringing greater judicial security to workers and a more effective legal protection of all these rights by the labor authorities.

## V. APPENDICES

### APPENDIX #1. Administrative Procedures.

**Labor procedures exist in our current labor legislation as much in the administrative as in the judicial channels.**

In the administrative channels are found the following procedures and means of contestation:

Law 290, published in Official Journal #206 on October 31, 1998, in Title III Articles 304-308, establishes the means of contestation against decisions made by the Ministry of Labor authorities and the distinct time-periods allowed in which to lodge an appeal against them. It establishes that the Recourses to Appeal and Replacement may work against decisions made by the Ministry of Labor. It establishes that administrative silence has negative effects. It establishes that grievances must be expressed and the right to appeal on the grounds of constitutionality utilized at the most 24 hours after appeals have been accepted. In those cases where legislation does not provide the right to lodge appeals nor determine time-periods, means of contestation must be used and time-periods determined according to these regulations.
All procedures through the administrative channels are eminently oral. The parties may make their legal claims orally.

Existing administrative proceedings or processes in our labor legislation: Collective authorization of suspension from work, Article 38 of the Labor Code: Article 38 establishes that all suspension must be authorized by a Labor Inspector and that the consent of the workers must be procured. The workers or their legal representatives must be granted a hearing on all requests for suspension, and the Inspector must make his or her decision within six days. The Code does not establish that the parties

can contest this decision, but such was already stated by aforementioned Law 290, which establishes the recourse to appeal against any decision made by the authorities.

**Proceedings to Authorize Termination of a Labor Contract by Just Cause. Article 48 of the Labor Code.**

Once the request has been presented by either of the parties, in writing or orally, before the Labor Inspector, this Inspector may reach no decision without giving a hearing to the other party. All the means of contestation designated in Articles 304-308 of Law 290 – published in the Official Journal #206 of October 31, 1998 – may go against the decision dictated by the Labor Inspector. These procedures must be followed in all cases where the legislation imposes that the labor relationship may only be terminated with just cause.

**Registration of a Trade Union. Article 213 of the Labor Code.**

Article 213 of the Labor Code establishes that once workers have presented their constitutional papers and statutes to the Directorate for Trade Union Associations, this authority must register them within a period of ten days. If the authority finds that any requirement has not been filled, the workers will be given three days to rectify it. If they do not do so, the registration will not proceed.

If the workers have fulfilled all requirements and the registration is denied, the workers or their attorney may appeal within five days of being notified of the denial. The Inspector General must rule on the appeal within a period of ten days. If the Inspector General rules against the appeal, the workers or their attorney may appeal to the courts within a period of thirty days after being notified of the ruling.

**Dissolution of Trade Unions. Articles 219-220.**

Only judges are empowered to rule on the request for dissolution of a trade union, whether the request was made by workers or the employer, according to Article 219 of the Labor Code. The same proceedings established for labor courts will be followed – meaning that which is established for verbal trials. If the judge's sentence is not appealed, it shall go unofficially before the Appeals Court for the territorial area where the trade union has its legal residence. If the ruling is confirmed, a copy of the sentence shall be sent to the Directorate for Trade Union Associations, so that that Directorate may cancel the trade union's registration. If the dissolution is voluntary, the general assembly of trade union members shall appoint a group responsible for the liquidation, as stipulated in Article 220 of the Labor Code. This liquidation committee shall act in accordance with the statutes or with what common law provides for associations.

**Concerning collective agreements. Article 238 of the Labor Code.**

Article 238 stipulates that, in a collective bargaining process, as soon a list of demands has been presented to the Directorate for Conciliation, conciliation proceedings for the two parties to negotiate and sign a collective agreement shall be arranged.

**Concerning socio-economic collective conflicts. Articles 370 and 401 of the Labor Code.**

The process for resolving socioeconomic conflicts shall begin with conciliation proceedings, which can last up to 23 days. After this, the case may go to a Tribunal for Strikes, which shall hold sessions for

three days (this time-period may be extended). If unresolved there, the conflict goes through a legal strike which may not last more than thirty days, and then ends in a compulsory Arbitration Court proceeding. An arbitration finding must be determined within five days (this may be extended), to definitively resolve the conflict – which is compulsory for both parties to the conflict.

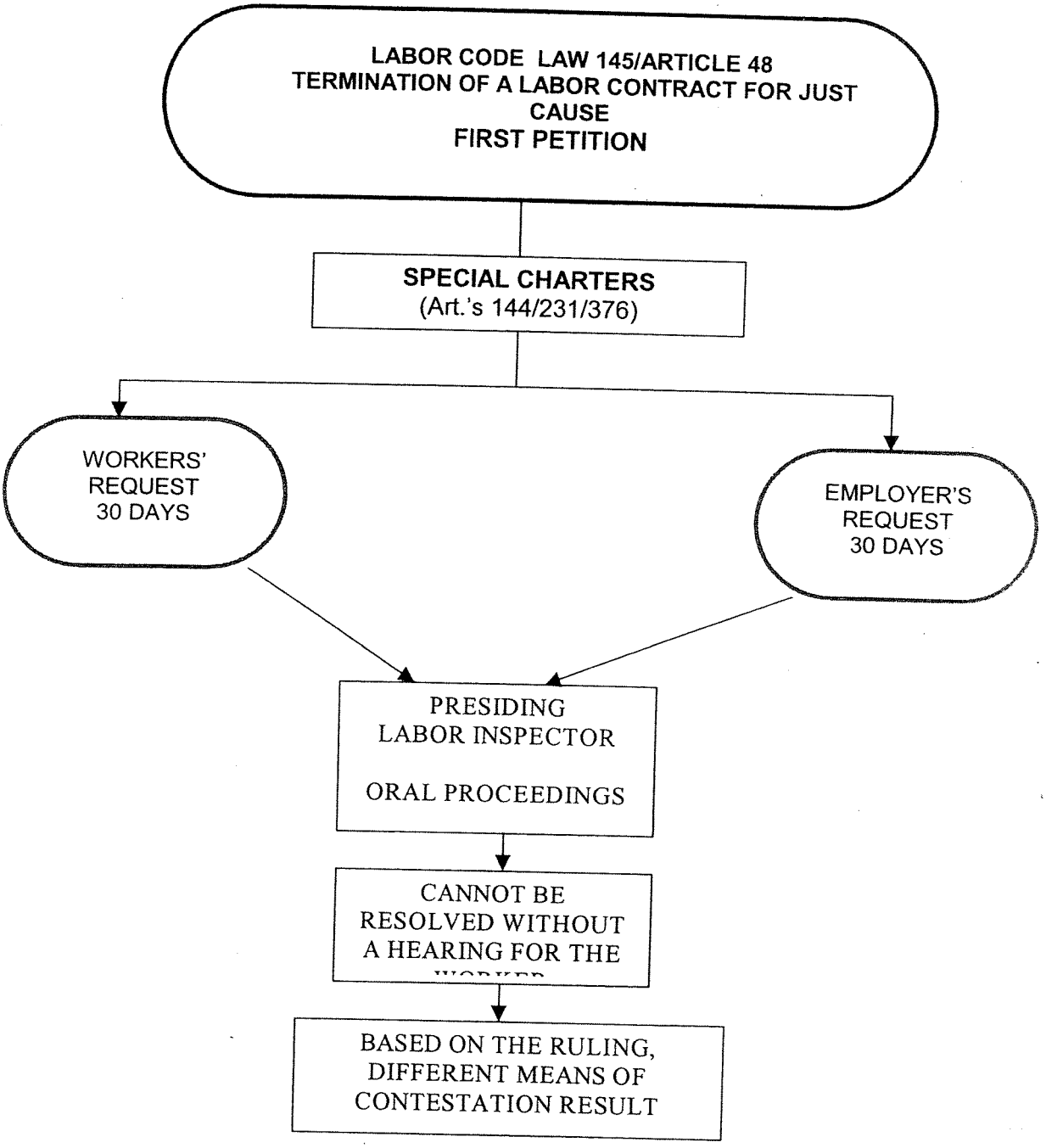
The persistent problem in administrative channels is that the labor authorities do not follow established proceedings, nor do they comply with established time-periods and terms, causing a slowing of justice. This forces the worker to, at best, negotiate at a disadvantage and, at worst, abandon his or her demands.
This situation also causes the parties judicial insecurity.

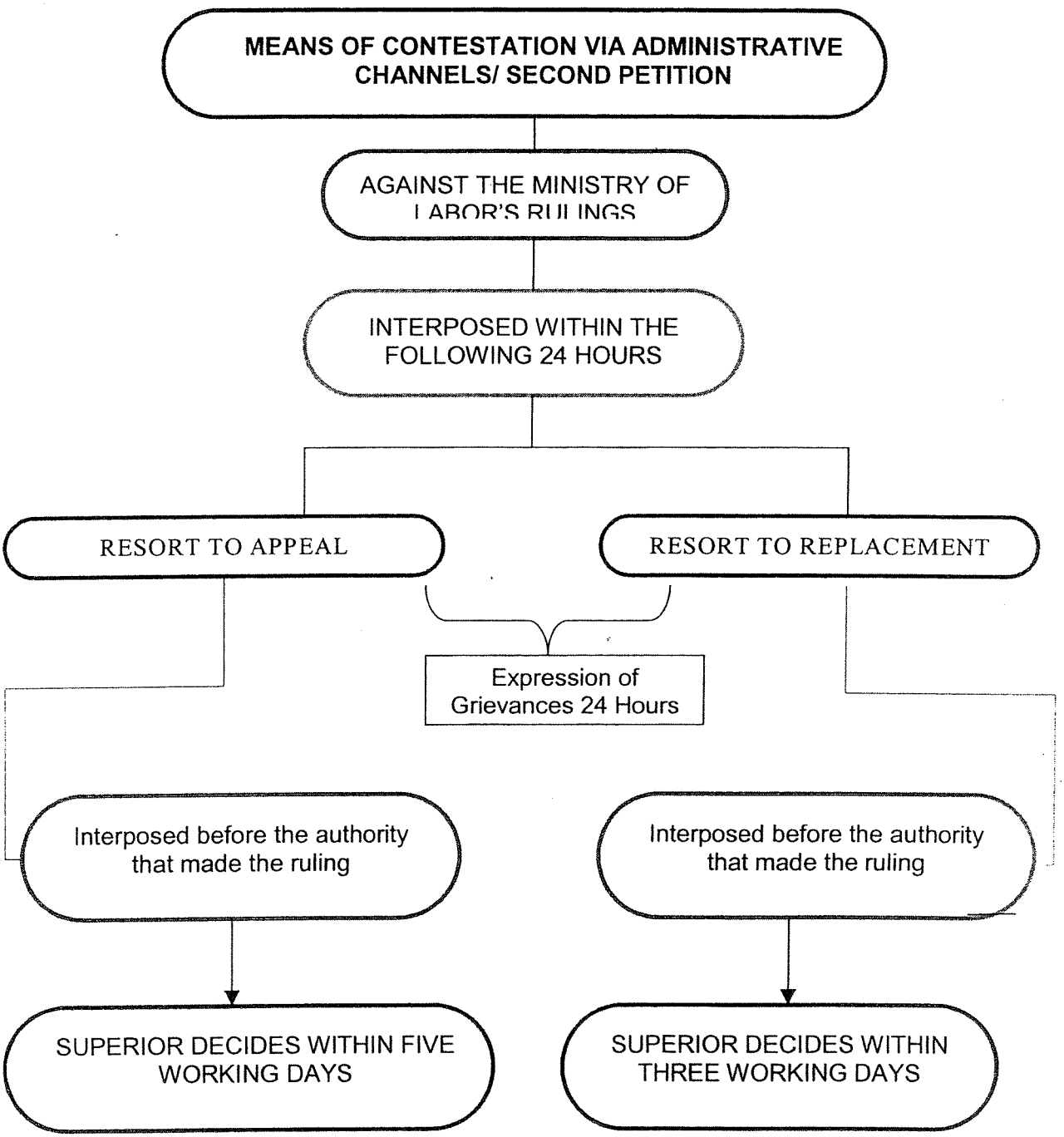
**Concerning Judicial Proceedings. Articles 307-369 of the Labor Code.**

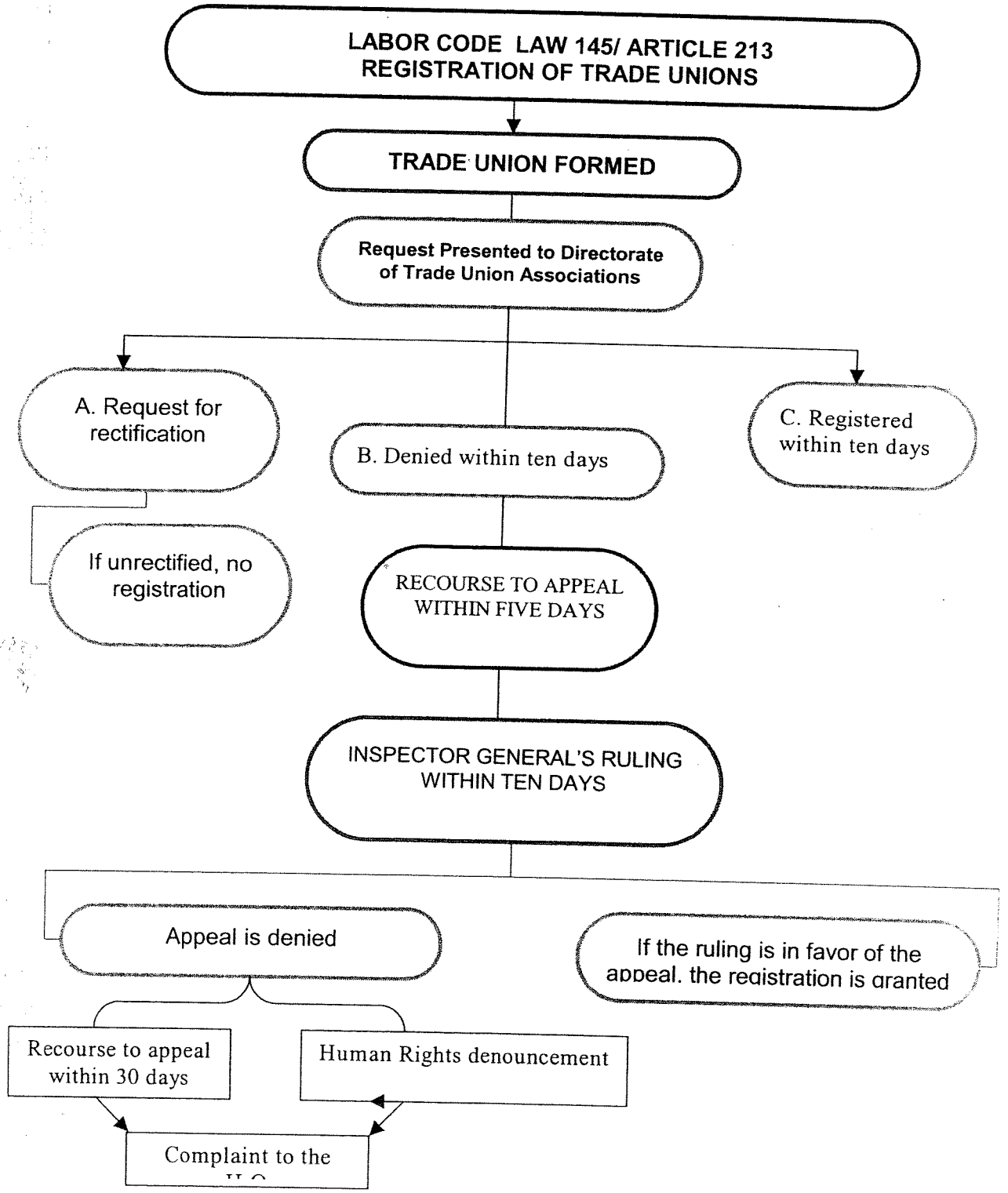
In judicial channels, established procedures for oral trials are followed. The process begins with either the worker or the employer going to the courts for justice, followed by conciliation proceedings. If an agreement is reached during these, the case ends. If no agreement is reached, the judge summons the defendant, so that within 48 hours he or she will respond to the suit – under pain of being declared in contempt if he or she does not do so. The judge proceeds to open the trial, for a maximum time-period of six days (which can be extended at the request of the parties or at the judge's discretion). After all evidence has been presented, the judge has three days to declare a sentence.

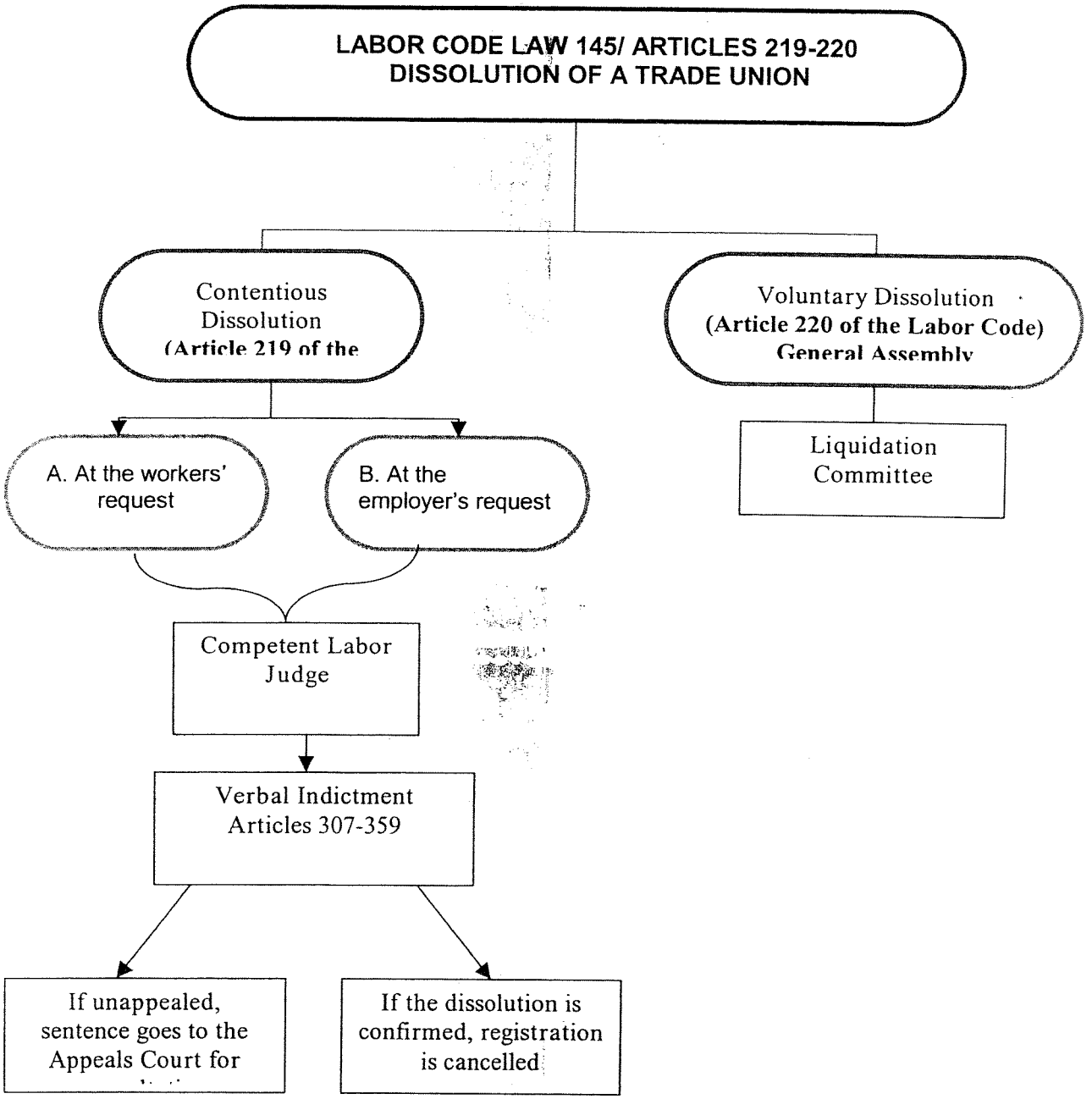
Remedies and recourses can be brought against the judge's sentence. The former are resolved by the judge, the latter by the highest authority and last resort, the Court of Appeals.

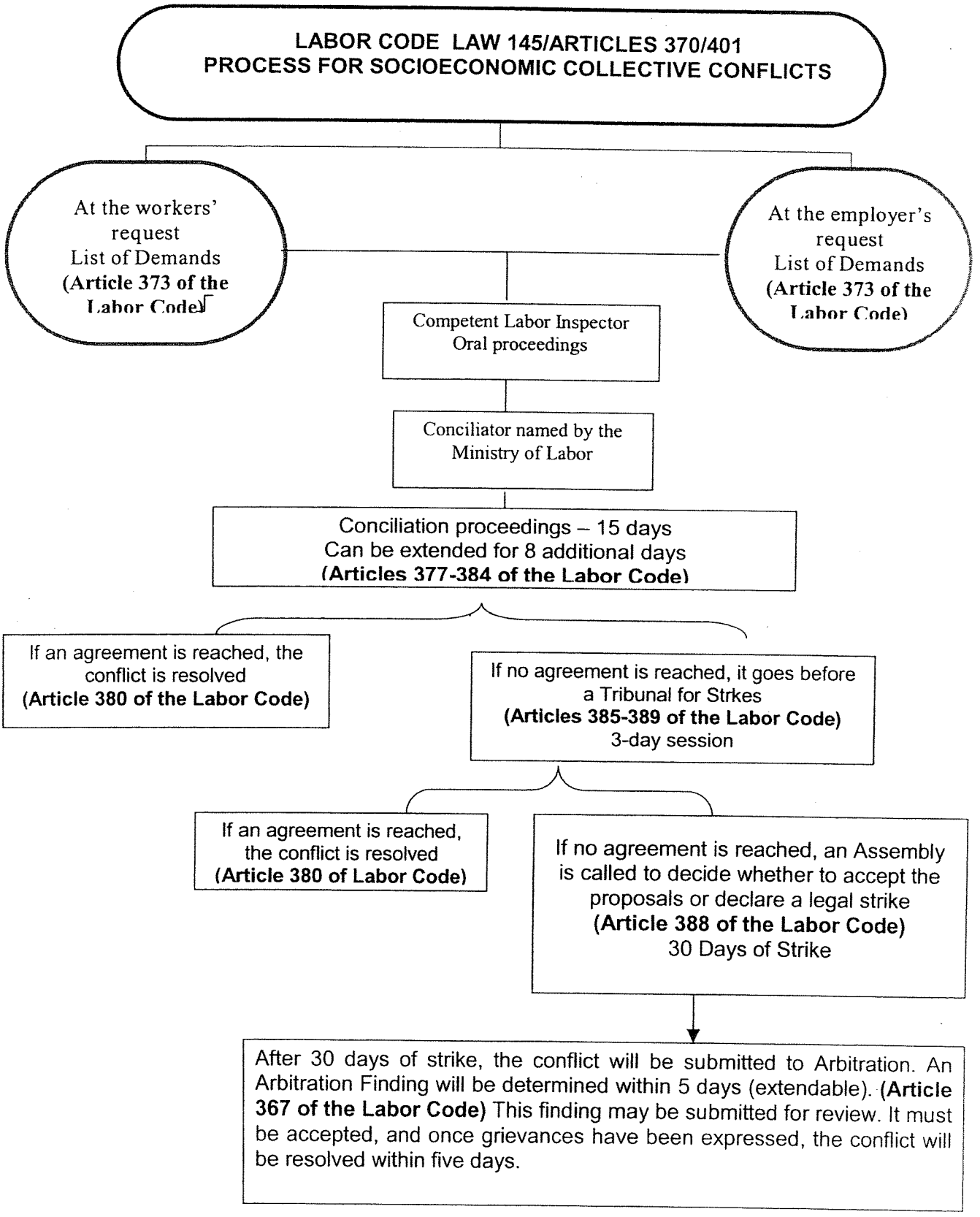
At times a case begins with a request for dismissal due to violation of prohibitive provisions included in the Code, due to acts that restrict workers' rights or due to acts that constitute reprisals against workers who exercised or attempted to exercise their trade union rights. In such cases the judge has a total time-period of 30 days to reach a decision, and the Court has 90 days, after receiving the proceedings – under pain of a fine for slowing justice – all according to what is stipulated in Article 46 of the Labor Code.
In judicial channels the problem is slowing of justice, with trials that last as long as three years. Workers are simply not able to wait so long. Far from improving, this situation is getting worse.

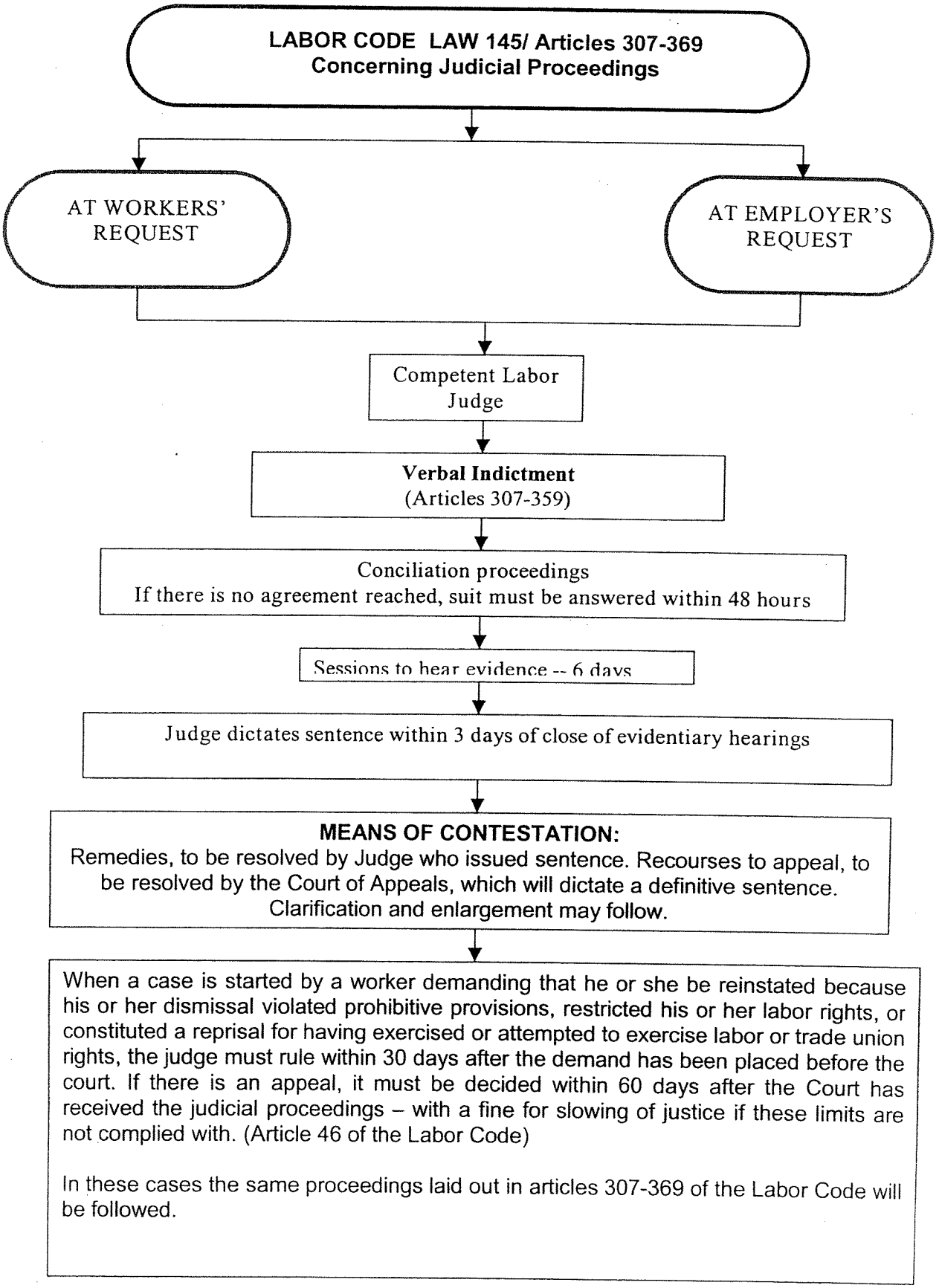

LABOR CODE LAW 145/ARTICLE 48
TERMINATION OF A LABOR CONTRACT FOR JUST CAUSE
FIRST PETITION
SPECIAL CHARTERS
(Art.'s 144/231/376)
WORKERS' REQUEST 30 DAYS
EMPLOYER'S REQUEST 30 DAYS
PRESIDING LABOR INSPECTOR
ORAL PROCEEDINGS
CANNOT BE RESOLVED WITHOUT A HEARING FOR THE
BASED ON THE RULING, DIFFERENT MEANS OF CONTESTATION RESULT


MEANS OF CONTESTATION VIA ADMINISTRATIVE CHANNELS/ SECOND PETITION
AGAINST THE MINISTRY OF LABOR'S RULINGS
INTERPOSED WITHIN THE FOLLOWING 24 HOURS
RESORT TO APPEAL
RESORT TO REPLACEMENT
Expression of Grievances 24 Hours
Interposed before the authority that made the ruling
Interposed before the authority that made the ruling
SUPERIOR DECIDES WITHIN FIVE WORKING DAYS
SUPERIOR DECIDES WITHIN THREE WORKING DAYS


LABOR CODE LAW 145/ ARTICLE 213
REGISTRATION OF TRADE UNIONS
TRADE UNION FORMED
Request Presented to Directorate of Trade Union Associations
A. Request for rectification
B. Denied within ten days
C. Registered within ten days
If unrectified, no registration
RECOURSE TO APPEAL WITHIN FIVE DAYS
INSPECTOR GENERAL'S RULING WITHIN TEN DAYS
Appeal is denied
If the ruling is in favor of the appeal, the registration is granted
Recourse to appeal within 30 days
Human Rights denouncement
Complaint to the


LABOR CODE LAW 145/ ARTICLES 219-220
DISSOLUTION OF A TRADE UNION
Contentious Dissolution (Article 219 of the
Voluntary Dissolution (Article 220 of the Labor Code) General Assembly
A. At the workers' request
B. At the employer's request
Liquidation Committee
Competent Labor Judge
Verbal Indictment Articles 307-359
If unappealed, sentence goes to the Appeals Court for
If the dissolution is confirmed, registration is cancelled


LABOR CODE LAW 145/ARTICLES 370/401
PROCESS FOR SOCIOECONOMIC COLLECTIVE CONFLICTS
At the workers' request List of Demands (Article 373 of the Labor Code)
At the employer's request List of Demands (Article 373 of the Labor Code)
Competent Labor Inspector Oral proceedings
Conciliator named by the Ministry of Labor
Conciliation proceedings – 15 days
Can be extended for 8 additional days
(Articles 377-384 of the Labor Code)
If an agreement is reached, the conflict is resolved (Article 380 of the Labor Code)
If no agreement is reached, it goes before a Tribunal for Strkes (Articles 385-389 of the Labor Code)
3-day session
If an agreement is reached, the conflict is resolved (Article 380 of Labor Code)
If no agreement is reached, an Assembly is called to decide whether to accept the proposals or declare a legal strike (Article 388 of the Labor Code)
30 Days of Strike
After 30 days of strike, the conflict will be submitted to Arbitration. An Arbitration Finding will be determined within 5 days (extendable). (Article 367 of the Labor Code) This finding may be submitted for review. It must be accepted, and once grievances have been expressed, the conflict will be resolved within five days.


LABOR CODE LAW 145/ Articles 307-369
Concerning Judicial Proceedings
AT WORKERS' REQUEST
AT EMPLOYER'S REQUEST
Competent Labor Judge
Verbal Indictment
(Articles 307-359)
Conciliation proceedings
If there is no agreement reached, suit must be answered within 48 hours
Sessions to hear evidence -- 6 days
Judge dictates sentence within 3 days of close of evidentiary hearings
MEANS OF CONTESTATION:
Remedies, to be resolved by Judge who issued sentence. Recourses to appeal, to be resolved by the Court of Appeals, which will dictate a definitive sentence. Clarification and enlargement may follow.
When a case is started by a worker demanding that he or she be reinstated because his or her dismissal violated prohibitive provisions, restricted his or her labor rights, or constituted a reprisal for having exercised or attempted to exercise labor or trade union rights, the judge must rule within 30 days after the demand has been placed before the court. If there is an appeal, it must be decided within 60 days after the Court has received the judicial proceedings – with a fine for slowing of justice if these limits are not complied with. (Article 46 of the Labor Code)
In these cases the same proceedings laid out in articles 307-369 of the Labor Code will be followed.